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IN THE

Supreme Court of the United States

BEATRICE BRANCH; RIMS BARBER; L.C. DORSEY; DAVID RULE; JAMES WOODARD; JOSEPH P. HUDSON; and ROBERT NORVEL,

Appellants,

v.

JOHN ROBERT SMITH; SHIRLEY HALL; and GENE WALKER,

and

ERIC CLARK, Secretary of State of Mississippi; MIKE MOORE, Attorney General of Mississippi; RONNIE MUSGROVE, Governor of Mississippi; MISSISSIPPI REPUBLICAN EXECUTIVE COMMITTEE; and MISSISSIPPI DEMOCRATIC EXECUTIVE COMMITTEE,

Appellees.

On Appeal from the United States District Court for the Southern District of Mississippi

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APPENDIX TO JURISDICTIONAL STATEMENT

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APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

JOHN ROBERT SMITH,
SHIRLEY HALL, AND
GENE WALKER — PLAINTIFFS

V.

CIVIL ACTION NO. 3:01-CV-855WS

ERIC CLARK, Secretary of State
of Mississippi; MIKE MOORE,
Attorney General for the State
of Mississippi; RONNIE MUSGROVE,
Governor of Mississippi; MISSISSIPPI
REPUBLICAN EXECUTIVE COMMITTEE;
AND MISSISSIPPI DEMOCRATIC
EXECUTIVE COMMITTEE — DEFENDANTS

BEATRICE BRANCH; RIMS BARBER;
L. C. DORSEY; DAVID RULE; JAMES
WOODARD; JOSEPH P. HUDSON; AND
ROBERT NORVEL — INTERVENORS

(Filed Feb. 26, 2002)

FINAL JUDGMENT

For the reasons stated in our opinions of February 19, 2002, and February 26, 2002, the defendants are hereby

enjoined from implementing the congressional redistricting plan adopted by the Chancery Court for the First Judicial District of Hinds County, Mississippi.

It is further ordered that the defendants are enjoined from implementing the former five-district congressional redistricting plan codified at Miss. Code Ann. § 25-15-1037.

It is further ordered that the defendants implement the congressional redistricting plan adopted by this court on its order of February 4, 2002, for conducting congressional primary and general elections for the State of Mississippi in 2002.

It is further ordered that the defendants shall use the congressional redistricting plan adopted by this court in its order of February 4, 2002, in all succeeding congressional primary and general elections for the State of Mississippi thereafter, until the State of Mississippi produces a constitutional congressional redistricting plan that is precleared in accordance with the procedures in Section 5 of the Voting Rights Act of 1965.

This court shall retain jurisdiction to implement, enforce, and amend this order as shall be necessary and just.

SO ORDERED, this, the 26th day of February, 2002.

/s/ E. Grady Jolly
E. GRADY JOLLY
United States Circuit Judge

/s/ Henry T. Wingate
HENRY T. WINGATE
United States District Judge

/s/ David C. Bramlette
DAVID C. BRAMLETTE
United States District Judge

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

JOHN ROBERT SMITH,
SHIRLEY HALL, AND
GENE WALKER

PLAINTIFFS

V.

CIVIL ACTION NO. 3:01-CV-855WS

ERIC CLARK, Secretary of State
of Mississippi; MIKE MOORE,
Attorney General for the State
of Mississippi; RONNIE MUSGROVE,
Governor of Mississippi; MISSISSIPPI
REPUBLICAN EXECUTIVE COMMITTEE;
AND MISSISSIPPI DEMOCRATIC
EXECUTIVE COMMITTEE

DEFENDANTS

BEATRICE BRANCH; RIMS BARBER;
L. C. DORSEY; DAVID RULE; JAMES
WOODARD; JOSEPH P. HUDSON; AND
ROBERT NORVEL

INTERVENORS

(Filed Feb. 26, 2002)

OPINION

Today we have enjoined the defendants from implementing the congressional redistricting plan for the 2002 primary and general election that was adopted by the Hinds

County, Mississippi chancery court. We have ordered the defendants to conduct said congressional elections based on this court's plan issued on February 4, 2002. The basis for this injunction and order is reflected in our opinion of February 19, that is, the failure of the timely preclearance under § 5 of the Voting Rights Act of the Hinds County Chancery Court's plan. The opinion that follows, holding that the adoption of the state court's plan is unconstitutional, for the reason that it violates Article I, Section 4 of the United States Constitution, is this court's alternative holding, in the event that on appeal it is determined that we erred in our February 19 ruling. Furthermore, inasmuch as the Intervenors are presently seeking a stay of this court's orders, it is expedient and efficient that the Supreme Court have before it the case as a whole, instead of truncated sub-parts.[1]

I.

Our order entered on January 15, 2002, and our opinion filed on February 19, 2002, contain the facts and procedural history of the case before us, and we refer to those documents for the background of this case. As we noted in our opinion of February 19 (footnote 7 on page 43), there remain, however, other constitutional questions raised by the plaintiffs as to the chancery court plan, that have remained dormant awaiting preclearance. Primarily, the plaintiffs have contended from the beginning of this lawsuit that under the United States Constitution, a state court may not constitutionally redistrict a state for United States congressional elections; that under the

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[1] We have jurisdiction to address this question pursuant to 28 U.S.C. § 2284(a) ("[a] district court of three judges shall be convened . . . when an action is filed challenging the constitutionality of the apportionment of congressional districts").

Constitution only the legislature can do so.[2]

The United States Constitution specifically provides in Article I, Section 4: "The Times, Places and Manner of holding Elections for Senators and Representatives shall be prescribed in each State by the *Legislature* thereof." (Emphasis supplied.) No case – or any other authority – has ever expressed doubt that this constitutional provision applies to congressional redistricting. Consequently, this provision is indisputably applicable to congressional redistricting in the state of Mississippi in 2002. Because the issue is squarely presented by the plaintiffs, we cannot – nor can any other court or any other party to the case before us – sidestep this express provision of the United States Constitution. The specific question we must confront is: What is the practical meaning of this constitutional provision, and how it is to be applied here, where the state chancery court – not the legislature – prescribed the "Places and Manner of holding Elections for . . . Representatives . . . ."

In determining this question, we have looked to the plain meaning of the easily understood words of this section, and applied it to the facts before us. We have then looked to case authority, including authorities of the Supreme Court of the United States, the lower federal courts, and the state courts that have addressed this particular section of the Constitution. This review of authorities leads us to this conclusion: Although the constitutional provision may not require the state legislature itself to enact the congressional redistricting plan, the state authority that produces the redistricting plan must, in order to

[2] The plaintiffs also argue that their due process rights were violated in the state court proceeding, by, inter alia, an expedited schedule that denied an adequate opportunity to conduct discovery, which prevented meaningful participation in the Chancery Court trial.

comply with Article I, Section 4 of the United States Constitution, find the source of its power to redistrict in some act of the legislature.

This predicate conclusion raises the next question that we must resolve: whether any enactment of the Mississippi legislature grants to the chancery court the power to redistrict the State of Mississippi for congressional elections. We find no such statute. Furthermore, no case of the Mississippi Supreme Court has ever indicated there is such a statute. We thus come to the final conclusion that the redistricting plan for congressional elections in 2002 produced by the Hinds County Chancery Court transgresses Article I, Section 4 of the United States Constitution, is therefore unconstitutional, and is consequently a nullity. We order it enjoined and direct that the said 2002 elections be conducted on the basis of the plan described in and attached to our February 4, 2002 order.

II. The Meaning of the Term "Legislature"

We turn now to investigate and resolve the meaning of the term "Legislature" as used in Article I, Section 4, to consider whether the chancery court can fall within the meaning of that term and to provide the appropriate remedy.

A. The Constitutional Clause

To begin, we turn our attention specifically to the words of Article I, Section 4: Reviewing the plain language, the provision provides that the "Times, Places and Manner of holding Elections for Senators and Representatives shall be

prescribed in each state by the Legislature thereof."[3] Applying these words to the facts before us, everyone agrees that the legislature has not enacted a redistricting plan. Instead of the legislature, the chancery court has chosen the "Places and Manner" of conducting the congressional elections in Mississippi. It would surely seem, on the basis of the plain constitutional language, that the chancery court's order implementing its plan constitutes a violation of Article I, Section 4. But, the answer is not quite so simple. We therefore turn now to consider the cases that have considered the meaning of "Legislature."

B. Cases Considering the Term "Legislature"

Only a few cases have construed this constitutional term. One of the earliest Supreme Court cases is *Davis v. Hildebrant*, 241 U.S. 565, 566 (1916). There, the constitution of the State of Ohio was amended in 1912 to vest the legislative power not only in the general assembly, but also in the people by way of popular referendum and initiative.[4] Thus, the people could

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[3] The rest of the clause reads: "but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators."

[4] The Ohio Constitution provides, in relevant part:

> The legislative power of the state shall be vested in a General Assembly consisting of a senate and house of representatives but the people reserve to themselves the power to propose to the General Assembly laws and amendments to the constitution, and to adopt or reject the same at the polls on a referendum vote as hereinafter provided.

disapprove, by popular referendum, any law passed by the General Assembly. The General Assembly passed a congressional redistricting plan, which then was disapproved by referendum. In 1911, Congress had passed a Reapportionment Act, which allowed states which had the same or an increased number of congressional representatives to redistrict "in the manner provided by the laws thereof,"[5] pursuant to Congress's authority under Article I, Section 4. A suit was brought in the Ohio Supreme Court, arguing that the referendum power was not validly part of the legislative power of the state and that the use of the referendum in this case

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Ohio Const. Art. II, § 1.

[5] Specifically, Section 4 of the Act provided:

> That in case of an increase in the number of Representatives in any State under this apportionment such additional Representative or Representatives shall be elected by the State at large and the other Representatives by the districts now prescribed by law until such State shall be redistricted in the manner provided by the laws thereof and in accordance with the rules enumerated in section three of this Act . . . .

Apportionment Act of Aug. 8, 1911, c. 5, § 4, 37 Stat. 13, 14. This section expired by its own limitation upon the enactment of the Reapportionment Act of June 18, 1929, c. 28, § 22, 46 Stat. 21, codified at 2 U.S.C. § 2a. The current § 2a provides methods for electing representatives when there has been a change in the number of representatives allotted to the state "[u]ntil a State is redistricted in the manner provided by the law thereof . . . ." 2 U.S.C. § 2(a)(c). This plainly implies that states can redistrict according to the "laws thereof." Laws can only be enacted by the legislature. This is in accord with the power granted to the legislature by Article I, Section 4. Of course, if there were any conflict between a congressional act and the Constitution, the Constitution would necessarily prevail.

violated Article I, Section 4. The Supreme Court of Ohio upheld the referendum procedure, noting that under the reserved powers in the Tenth Amendment to the United States Constitution, the people could determine the "character of [their] Legislature," and that "by the adoption of the amendment of 1912 [to the Ohio constitution] the people expressly limited this legislative power by reserving to themselves the power to reject any law by means of a popular referendum." *Davis v. Hildebrant*, 94 Ohio St. 154, 161-62 (Ohio 1916). The Supreme Court affirmed the holding of the Ohio Supreme Court, finding that the referendum provision did not violate state or federal law, or Article I, Section 4. *Davis*, 241 U.S. at 569-70. The Court stated that "so far as the state had the power to do it, the referendum constituted a part of the state Constitution and laws, and was contained within the legislative power." *Id.* at 568. As to the Reapportionment Act of 1911's provision for reapportionment according to the "laws" of a state, the Court held that "by inserting a clause plainly intended to provide that where, by the state Constitution and laws, the referendum was treated as part of the legislative power, the power as thus constituted should be held and treated to be the state legislative power for the purpose of creating congressional districts by law." *Id.* The Court further held that including the referendum within the state legislative power did not violate Article I, Section 4, as Section 4 allows Congress to make regulations for the choosing of Representatives, and Congress had expressly permitted states to reapportion according to the laws of the state. *Id.* at 569. In short, because the referendum invalidating the congressional districts was derived from the legislative power of the state constitution, it comported with the requirements of Article I, Section 4. *Davis*, however, demonstrates some flexibility in Article I, Section 4, because it suggests that the term "Legislature" is not confined to the state legislature as an institutional body, but

also encompasses the initiative, authorized by the state constitution, as a source of legislative power under state law.[6]

In *Smiley v. Holm*, 285 U.S. 355, 361 (1932), the Minnesota legislature had redistricted the state's congressional seats and the governor had vetoed the plan, but the Minnesota House of Representatives directed the Secretary of State to implement the plan despite the fact that the legislature had not overridden the governor's veto, as required by Minnesota law. The plaintiff in *Smiley* alleged that the governor's veto had invalidated the plan. The issue presented was whether a governor could veto a congressional redistricting plan given the reference in Article I, Section 4 to the "Legislature" only. The court found that the reference to the "Legislature" of a state in Article I, Section 4 did not invest the Legislature with "a particular authority . . . the definition of which imports a function different from that of lawgiver . . . ." *Id.* at 365.

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[6] Although Mississippi allows voters to approve constitutional amendments by referendum, *see* Miss. Code Ann. § 23-15-369, and to propose constitutional amendments by initiative, *see* Miss. Code Ann. § 23-17-1, *et seq.*, this is not at issue in the case before us. Other than these provisions, the legislative power is vested by the constitution exclusively in the legislature. The Mississippi Constitution, Article I, § 1 provides that: "The powers of the government of the state of Mississippi shall be divided into three distinct departments, and each of them confided to a separate magistracy, to-wit: those which are legislative to one, those which are judicial to another, and those which are executive to another." The constitution further limits the exercise of each power to the branch in which it is vested: "No person or collection of persons, being one or belonging to one of these departments, shall exercise any power properly belonging to either of the others. The acceptance of an office in either of said departments shall, of itself, and at once, vacate any and all offices held by the person so accepting in either of the other departments." Miss. Const. Art. 1, § 2. The legislative power is vested exclusively in a legislature: "The legislative power of this state shall be vested in a legislature which shall consist of a senate and a house of representatives." Miss. Const. Art. 4, § 33.

Rather, "the exercise of the authority must be in accordance with the method the state has prescribed for legislative enactments." *Id.* at 367. Therefore, because the laws of Minnesota allowed for a gubernatorial veto of legislative enactments, it was proper for the Governor to veto the redistricting legislation. *Id.* at 369. *Smiley* concluded:

> It clearly follows that there is nothing in article I, [§] 4, which precludes a state from providing that legislative action in districting the state for congressional elections shall be subject to the veto power of the Governor as in other cases of the exercise of the lawmaking power.

Id. at 372-73. *Smiley* indicates that congressional redistricting must be done by a state in the same manner that other legislative enactments are implemented. *See also Carstens v. Lamm*, 543 F. Supp. 68, 79 (D. Colo. 1982) ("Congressional redistricting is a law-making function subject to the state's constitutional procedures."; citing *Smiley*). These two cases, *Davis* and *Smiley*, seem to constitute the complete list of Supreme Court cases that provide some definition for the term "Legislature."

There is, however, one lower federal court case that has addressed the question, *Grills v. Branigin*, 284 F. Supp. 176, 178 (S.D. Ind.), *aff'd*, 391 U.S. 364 (1968). This case involved a challenge to several statutes passed by the Indiana General Assembly reapportioning the state's congressional districts. One of the plaintiffs requested that the defendants, the members of the State Election Board of Indiana, be authorized to reapportion the congressional districts. The court denied this

request, noting:

> Article I, Section 4, Clause 1 of the United States Constitution clearly does not authorize the defendants, as members of the Election Board of Indiana, to create congressional districts. This power is granted to the Indiana General Assembly and the Election Board does not possess the legislative power under the Indiana Constitution nor does it possess judicial power under the Indiana Constitution. In the case of *Smiley v. Holm* [] it was held that Article I, Section 4, Clause 1 of the United States Constitution's reference to the legislature of the several states required complete legislative treatment of a Districting Act which included the approval of the Governor.

Id. at 180. This case indicates that there must be some delegation of legislative authority, delegated by a legislative enactment of some sort, to draw congressional districts.

In sum, these three cases – the only ones that we have found that are helpful in defining the term "Legislature" – have made clear that the reference to "Legislature" in Article I, Section 4 is to the law-making body and processes of the state. These cases suggest that congressional redistricting must be done within the perimeters of the legislative processes, whether the redistricting is done by the legislature itself or pursuant to the valid delegation of legislative power. We have found no

cases that support a contrary conclusion.[7]

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[7] While we recognize that there have been a number of cases in which state courts have exercised the power to redistrict congressional seats, none of these cases has addressed the Article I, Section 4 question.

In California, on two occasions the Supreme Court of the state has reapportioned congressional districts. *Legislature v. Reinecke*, 10 Cal. 3d 396, 401 (Cal. 1973) (In Bank); *Wilson v. Eu*, 1 Cal. 4th 707 (Cal. 1992) (In Bank). In both cases, the California Supreme Court acted under its original mandate jurisdiction, as granted to the court in the state constitution, which of course provides a source of law for the state. *See* Cal. Const. Art. VI, § 10. The Article I, Section 4 issue was not raised.

In New York, although the New York Supreme Court, Kings County, drew a congressional redistricting plan for the state after the Legislature failed to do so, this plan subsequently was adopted by the legislature and then precleared by the Justice Department. *See Reid v. Marino*, Index No. 9567-92 (N.Y. Sup. Ct., Kings Co. 1992); *Puerto Rican Legal Defense & Education Fund v. Gantt*, 796 F. Supp. 677 (E.D.N.Y.), *vacated and dismissed as moot, Gantt v. Skelos*, 506 U.S. 801 (1992); *Puerto Rican Legal Defense & Education Fund v. Gantt*, 796 F. Supp. 681, 697-98 (E.D.N.Y. 1992); *Puerto Rican Legal Defense and Education Fund v. Gantt*, 796 F. Supp. 698, 699 (E.D.N.Y. 1992). The Article I, Section 4 issue was not raised.

In Texas, the Legislature failed to adopt a congressional reapportionment plan during its 2001 session, and the Texas Supreme Court stated that "[w]hen the Legislature does not act, citizens may sue and, then, it is the judiciary's role to determine the appropriate redistricting plan." *Perry v. Del Rio*, 2001 WL 1285081, *5 (Tex. Oct. 19, 2001). However, the Texas Supreme Court rejected the plan adopted by the trial court in that case, and a federal three-judge panel proceeded to trial and implemented its own redistricting plan. *See Balderas v. Texas*, No. 6:01-CV 158 (E.D. Tex. Nov. 14, 2001). Again, the Article I, Section 4 issue was not raised.

Finally, the New Jersey Supreme Court ordered a minor change in a congressional redistricting statute adopted by the New Jersey Legislature in order to reduce the population disparity among districts from 851 people to thirteen people. *See Koziol v. Burkhardt*, 51 N.J. 412, 416-17 (1968). The

C. Growe v. Emison

The Intervenors understandably rely on *Growe v. Emison*, 507 U.S. 25 (1993) and argue that it trumps all cases we have discussed respecting Article I, Section 4 in redistricting matters. At the outset, we should note our agreement with the Intervenors that *Growe* seems to stand for the proposition that the role of state courts in redistricting, generally, must be fully respected by the federal courts. We should further note that if *Growe* stood alone as the authority on the issue before us – that is, if we could disregard Article I, Section 4 and the cases we have referred to earlier – we would dismiss the plaintiffs' claim forthwith. However, we cannot ignore the Constitution and other Supreme Court authority, so we turn now to examine *Growe* and to determine if, indeed, it is contrary to or requires us to disregard our earlier conclusion that there must be a source of legislative authority for congressional redistricting.

In *Growe*, a number of plaintiffs filed suit in state court, challenging the existing *legislative and congressional* districts in Minnesota under the 14th Amendment to the United States Constitution and the Minnesota Constitution Article 4, Section 2, i.e., the one person-one vote principle, in the light of the new census. The parties stipulated that the existing districts were unconstitutional, and the Minnesota Supreme Court appointed a Special Redistricting Panel, consisting of one appellate judge

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court noted that its practice ordinarily was to leave such changes to the legislature, but because the case was heard by the court on April 2nd, decided on April 3rd, and "the election statute requires administrative action by April 5 and since the required alterations would not depart from the basic legislative plan, it seems fitting for the Court to direct the necessary changes, subject of course to the power of the Legislature to adopt another plan consonant with constitutional principles." *Id.* at 417. The Article I, Section 4 issue was not discussed.

and two district judges, to preside over the case. *Id.* at 28. The Minnesota Supreme Court did so because "[t]he Chief Justice has authority to appoint a special redistricting panel under Minn. Stat. §§ 2.724 and 480.16."[8] *Cotlow v. Growe*, 622 N.W.2d 561, 562 (Minn. 2001).[9] Meanwhile, two suits were filed in federal court and a federal three-judge panel was convened to hear the consolidated cases. *Growe*, 507 U.S. at 28. After a period of deferral to allow the state legislature to act, the federal court stayed the proceedings in state court, which had developed a redistricting plan, proceedings and ultimately adopted its own federal plan for state legislative and for congressional redistricting plans. *Id.* at 30-31. The Supreme Court held that the district court erred in not deferring

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[8] Minn. Stat. § 2.724 provides in relevant part: "When public convenience and necessity require it, the chief justice of the supreme court may assign any judge of any court to serve and discharge the duties of judge of any court in a judicial district not that judge's own at such times as the chief justice may determine." Minn. Stat. § 480.16 provides:

> The chief justice shall consider all recommendations of the court administrator for the assignment of judges, and has discretionary authority to direct any judge whose calendar, in the judgment of the chief justice, will permit, to hold court in any county or district where need therefore exists, to the end that the courts of this state shall function with maximum efficiency, and that the work of other courts shall be equitably distributed. The supreme court may provide by rule for the enforcement of this section and section 480.17.

[9] This case involved a motion to reopen the original *Cotlow* case, which was the case pending before the three-judge state court when the *Growe* case was brought in federal court and decided.

to the state court's timely consideration of legislative and congressional reapportionment. *Id.* at 36-37.

The Supreme Court in *Growe* indicated that state courts have a significant role in redistricting. *Growe* declares:

> In the reapportionment context, the Court has required federal judges to defer consideration of disputes involving redistricting where the State, through its legislative or judicial branch, has begun to address that highly political task itself . . . [T]he Constitution leaves with the States primary responsibility for apportionment of their federal congressional and state legislative districts. See U.S. Const., Art. I, § 2. 'We say once again what has been said on many occasions: reapportionment is primarily the duty and responsibility of the State through its legislature or other body, rather than of a federal court.' *Chapman v. Meier*, 420 U.S. 1, 27 (1975).

507 U.S. at 34. To place the holding of the Supreme Court in context, we start with the pivotal observation that the Article I, Section 4 issue was not discussed or even raised in *Growe* because – unlike this case – the parties did not dispute the constitutional jurisdiction of the state court. *See id.* at 32. (*See also Texas v. Cobb*, 532 U.S. 162, 168 (2001) ("Constitutional rights are not defined by inferences from opinions which did not address the question at issue.")) Without objection from

any party, the Minnesota Supreme Court relied on its specific authority under the statutes of Minnesota to assign judges to hear cases "where need therefor exists," and appointed a three-judge panel. We also note that *Chapman*, relied on by the Court in *Growe*, involved only the reapportionment of the state legislature, not congressional districts, and therefore no Article I, Section 4 question could have been implicated.

It is certainly true that the Supreme Court chastised the federal court in *Growe* for dismissing the role of the state court in the redistricting process. Nevertheless, we cannot conclude that *Growe* stands for the proposition that we may disregard Article I, Section 4, or these previously cited Supreme Court authorities. This conclusion is undergirded by the facts that: Article I, Section 4 was not raised in *Growe*; the earlier Supreme Court cases addressing Article I, § 4 were not referred to, much less overruled, *see United States v. Hatter*, 532 U.S. 557, 567 (2001) ("it is [the Supreme] Court's prerogative alone to overrule one of its precedents") (internal quotation marks and citations omitted)); the *Chapman* case relied upon in *Growe* involved only a state court redistricting the state legislature, not congressional redistricting; and, finally, there was some, albeit tenuous, legislative authority for the Minnesota Supreme Court's action in *Growe*.

Thus, based on our understanding of the constitutional provision in the light of its plain language and the case authority when considered as a whole, we hold: Article I, § 4 requires a state to adopt a congressional redistricting plan in a manner that comports with legislative authority as defined by state law.

III. Authority of the Chancery Court

In the case before us, we can find no legislative act upon which to base the chancery court's authority to act in congressional redistricting. Unlike in Minnesota and California, the Mississippi Supreme Court has appellate jurisdiction only.[10] While the Mississippi legislature has empowered other state bodies to redistrict a number of *state* electoral districts, it has not authorized any other state body, including the chancery court, to redistrict *congressional* districts. For example, the state constitution grants the Mississippi Supreme Court the authority to redistrict circuit and chancery court districts in the State of Mississippi when the legislature fails to do so. *See* Miss. Const. Art. 6, § 152. In another instance, the legislature has provided that if it is unsuccessful in redistricting state legislative districts, a five-member commission will redistrict the state. Miss. Const. Art. 13, § 254. This commission consists of the chief justice of the Mississippi Supreme Court as chairman, and the attorney general, secretary of state, speaker of the house of representatives, and president pro tempore of the senate. *Id.* There is no similar legislative grant for redistricting congressional districts. Further, there is no statutory authority in Mississippi for Supreme Court judges to assign individual judges to hear cases when the public necessity requires, unlike

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[10] The Constitution of the State of Mississippi provides:

> The Supreme Court shall have such jurisdiction as properly belongs to a court of appeals and shall exercise no jurisdiction on matters other than those specifically provided by this Constitution or by general law.

Miss. Const. Art. 6, § 146. *See also* Miss. Code Ann.§ 9-3-9.

in Minnesota.

The intervenors argue that the Mississippi chancery courts have jurisdiction over "[a]ll matters in equity," Miss. Const. Art. 6, § 159, and that this constitutes the authority for the Hinds County Chancery Court to redistrict the state for congressional elections. However, the Mississippi Supreme Court has specifically held, in the past, that the state chancery courts have no jurisdiction over a complaint that sought to enjoin congressional elections on the ground that a congressional redistricting statute adopted by the state legislature violated a federal statute which required congressional districts to contain "as nearly as practicable an equal number of inhabitants." *See Brumfield v. Brock*, 142 So. 745, 746 (Miss. 1932). "By a long line of decisions this court has held that courts of equity deal alone with civil and property rights and not with political rights." *Id.* In 1994, the Mississippi Supreme Court stated: "Chancery courts in this state do not have the jurisdiction to enjoin elections or to otherwise interfere with political and electoral matters which are not within the traditional reach of equity jurisdiction." *In re McMillin*, 642 So. 2d 1336, 1339 (Miss. 1994).

It is true, of course, that in *In re Mauldin*, No. 2001-M-01891 (Miss. Sup. Ct., Dec. 13, 2001), the Mississippi Supreme Court held that this Hinds County Chancery Court did have jurisdiction over the state lawsuit brought in the instant case.[11] The court did not provide any basis for its holding, did

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[11] The holding of the Mississippi Supreme Court stated, in its entirety:

> After due consideration the Court finds that the Hinds County Chancery Court has jurisdiction of this matter. The Court further finds that the request to dismiss the Plaintiffs'

not refer to its earlier cases to the contrary, and did not point to any legislative authority that authorized the chancery court to act.[12]

> Amended Complaint is denied. The Court further finds that the request to transfer this cause to circuit court is denied, as is the request for stay of the December 14, 2001, trial date. Any congressional redistricting plan adopted by the chancery court in cause no. G-2001-1777 W/4 will remain in effect, subject to any congressional redistricting plan which may be timely adopted by the Legislature.

This language could be interpreted to suggest that the Mississippi Supreme Court intended that the State's congressional districts should be reapportioned by a single chancery judge with no appellate review. Although an appeal of the Chancery Court's judgment has been filed, there is no indication when and if the court will consider the merits of the appeal.

[12] The Intervenors argue that *Adams County Election Comm'n v. Sanders*, 586 So. 2d 829 (Miss. 1991), gave the chancery court authority to redistrict congressional seats. However, *Adams County* only involved a request for an injunction against the County Election Commission, preventing it from conducting the primary and general elections for the Adams County Board of Supervisors. The chancery court issued the injunction, but did not engage in the drawing of districts on its own. Further, *Adams County* did not involve congressional districts, which are governed by Article I, Section 4, but only county board of supervisors districts. Additionally, the Mississippi Supreme Court recognized "that state courts have concurrent jurisdiction with the federal courts to decide whether § 5 of the Voting Rights Act applies to contemplated changes in election procedures," but did not decide "which state court, chancery or circuit, should decide such questions. . . . " *Id.* at 831.

Deciding whether an official must submit a voting change for preclearance is to be distinguished from the actual drawing of congressional districts. The Mississippi Supreme Court has stated that a court "can direct an official or commission to perform its official duty or to perform a

In sum, we can only conclude that the requirements of Article I, Section 4 were not met in this case, as there has been no indication that the chancery court had any legislative authority to draw the state's congressional districts. Indeed, the Mississippi Supreme Court has specifically held that such matters do *not* fall within the equity jurisdiction of the chancery courts. Therefore, irrespective of whether the chancery court plan is precleared, the chancery court plan cannot be implemented by the State of Mississippi, because the chancery court's adoption of it, in the absence of any state legislative authority, violates Article I, Section 4.[13]

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ministerial act, but it cannot project itself into the discretionary function of the official or the commission. Stated differently, it can direct action to be taken, but it cannot direct the outcome of the mandated function." *In re Wilbourn*, 590 So. 2d 1381, 1385 (Miss 1991) (quotation omitted). Based on *Wilbourn*, the Mississippi Supreme Court has allowed a circuit court to enjoin the carrying out of city elections under an illegal election law "until the City could amend its Charter in compliance with Miss. Code. Ann. § 21-17-9 (1990)." *City of Grenada v. Harrelson*, 725 So. 2d 770, 773 (Miss. 1998). Again, this clearly is not the same issue as whether a chancery court judge has the power to draw congressional districts for the entire state.

[13] Although a legislature may be able to delegate its powers granted under Article I, Section 4, this is not the factual circumstance presented to us. *See, e.g., Brady v. The New Jersey Redistricting Comm.*, 131 N.J. 594 (N.J. 1992). The New Jersey Supreme Court upheld an Act, passed by the Legislature and signed into law by the Governor, which created the New Jersey Redistricting Commission, with responsibility for establishing the state's congressional districts. *Id.* at 601-02. The Act allowed the Republican and Democratic parties to each appoint six commissioners to the Commission, and allowed the twelve commissioners to select one independent member to serve as the Chairman of the commission and to vote only in the event of a tie. The Act provided the Commission with specific guidelines for drawing congressional districits, i.e., equality in population, preservation of minority communities, contiguity, and preservation of continuity in congressional districts. *Id.* at 602-03. The

IV. Remedy

The precise question of an appropriate remedy for an Article I, Section 4 violation has not been addressed before. However, under established principles, this court has the authority to order the use of its own congressional redistricting plan in place of a state's plan if we find a constitutional violation in the state's plan. *See Hastert v. State Board of Elections*, 777 F. Supp. 634, 661 (N.D. Ill. 1991) (finding Illinois's existing congressional districting plan unconstitutional and therefore "null and void," and ordering that the court's redistricting plan be used in the upcoming congressional election); *Shayer v. Kirkpatrick*, 541 F. Supp. 922, 934 (W.D. Mo.) (declaring state's existing congressional apportionment plan unconstitutional and ordering that the redistricting plan crafted by the court be used "until a timely new congressional redistricting act enacted by the State of Missouri takes effect"), *aff'd*, 456 U.S. 966 (1982); *Carstens v. Lamm*, 543 F. Supp. 68, 100 (D. Colo. 1982) (declaring existing state congressional districting plan unconstitutional, ordering use of plan developed by federal three-judge district court, and ordering defendant Colorado Secretary of State to be

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Court found that the Commission did not violate Article I, Section 4 because it involved a valid delegation of legislative powers to a "specialized form of administrative agency," the discretion of which was "hemmed in by standards sufficiently definitive to guide its exercise." *Id.* at 607-08 (citations and quotation marks omitted). The court also noted that the Act was passed pursuant to the lawmaking process of the state, i.e. was passed by both houses of the legislature and signed by the Governor. *Id.* at 610. We note that the Act provided it would expire on January 1, 2001. *See* 1991 N.J. Laws, c. 510, § 12.

governed by and comply with the court's redistricting plan).[14]

V. Conclusion

In the light of the foregoing analysis, the congressional redistricting plan adopted by the chancery court is declared unconstitutional, and the state's implementation of the chancery court plan is enjoined, as per our Final Judgment entered today.

SO ORDERED, this, the 26th day of February, 2002.

/s/ E. Grady Jolly
E. GRADY JOLLY
United States Circuit Judge

/s/ Henry T. Wingate
HENRY T. WINGATE
United States District Judge

/s/ David C. Bramlette
DAVID C. BRAMLETTE
United States District Judge

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[14] The plaintiffs also argue that their due process rights were violated by the state court proceeding. However, because the plaintiffs were not parties to the state court proceeding and they are attempting to raise the rights of third parties, they do not have standing to raise this issue in this court. *See U.S. Dept. of Labor v. Triplett*, 494 U.S. 715, 720 (1990) ("[A] litigant must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties. This is generally so even when the very same allegedly illegal act that affects the litigant also affects a third party.") (citations and quotation marks omitted).

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

JOHN ROBERT SMITH,
SHIRLEY HALL, AND
GENE WALKER — PLAINTIFFS

V. — CIVIL ACTION NO. 3:01-CV-855WS

ERIC CLARK, Secretary of State
of Mississippi; MIKE MOORE,
Attorney General for the State
of Mississippi; RONNIE MUSGROVE,
Governor of Mississippi; MISSISSIPPI
REPUBLICAN EXECUTIVE COMMITTEE;
AND MISSISSIPPI DEMOCRATIC
EXECUTIVE COMMITTEE — DEFENDANTS

BEATRICE BRANCH; RIMS BARBER;
L. C. DORSEY; DAVID RULE; JAMES
WOODARD; JOSEPH P. HUDSON;
AND ROBERT NORVEL — INTERVENORS

(Filed Feb. 19, 2002)

OPINION

This opinion follows the trial in this matter on January 28 and 29, 2002, and our order of February 4, 2002, which attached the proposed congressional redistricting plan that we

had drafted. We stated in that order that we proposed to implement that plan, absent timely preclearance by the Department of Justice of the plan adopted by the Hinds County Chancery Court. We directed the parties to show cause why this court's plan failed to meet constitutional and federal standards and should not be implemented. The Intervenors filed certain objections. For the reasons that follow, we overrule the Intervenors' objections to this court's plan. Furthermore, we make clear that we will enjoin the implementation of the Chancery Court plan for the 2002 congressional elections, and order that the elections in 2002 be conducted in accordance with this court's plan of February 4, 2002, if the Chancery Court plan has not been precleared on or before the close of business on February 25, 2002.[1]

I. Facts and Procedural History

The facts and procedural history are set out in our order of January 15, 2002. In that order, we concluded that it was necessary for us to assert our jurisdiction in order to ensure that an enforceable congressional redistricting plan was in place prior to the March 1, 2002 deadline for candidates to qualify for the 2002 congressional elections, because it appeared uncertain whether the State authorities would have a redistricting plan in place prior to that deadline.

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[1]The plan adopted by the Chancery Court cannot be implemented unless the Department of Justice "has interposed no objection within a 60-day period following submission." 28 C.F.R. § 51.1(2). The initial 60-day period was to have expired on February 25. On February 14, the Department of Justice requested additional information from State authorities. A new 60-day period will begin to run upon receipt of the requested information. 28 C.F.R. § 51.37. It is still possible that the Chancery Court plan will be precleared by February 25.

On January 16, we conducted a scheduling conference. Thereafter, we entered a scheduling order allowing the parties an opportunity to conduct discovery and setting the matter for trial on January 28 and 29, 2002. Counsel for the Mississippi Democratic Executive Committee advised this court that his client adopted the position taken by the Intervenors. The Mississippi Republican Executive Committee was aligned with the Plaintiffs.

At trial, the Plaintiffs presented nine plans and called seven witnesses. The Intervenors presented two plans and called three witnesses. In addition, the record of the proceedings conducted in the Chancery Court, including the trial transcript and exhibits, was made a part of the record in this federal proceeding.

The Intervenors submitted a post-trial brief in which they contended that, even if the plan adopted by the Chancery Court is not precleared prior to the March 1 qualifying deadline, we nevertheless must defer to state policy and use the state court plan as a temporary plan for the 2002 congressional elections. Alternatively, the Intervenors urged us to utilize Branch Plan 2B, described *infra*, as an interim court-ordered plan. In the further alternative, the Intervenors urged us to postpone the qualifying deadline to await a preclearance decision. Finally, the Intervenors argued that, if this court drew its own plan, it should attempt to draw the third district with a higher percentage of black voting age population than that reflected in the plans submitted by the Plaintiffs.

After considering these arguments of counsel and the evidence presented at trial, we drafted our own plan. We concluded that none of the plans submitted by the parties fully comported with the objectives and criteria that should be

incorporated in a judicially approved redistricting plan. We considered that the Intervenors had offered little evidence that their plans address any of the factors that must be considered by a federal court in congressional redistricting. In reviewing the plans offered by the Intervenors, we took into account that they were admittedly drawn with partisan political objectives in mind, and, as a result, compactness of districts was not a factor. With respect to the plans offered by the Plaintiffs, although the testimony indicated that they had taken into account some of the relevant neutral factors, we found that each of them had various flaws. We concluded that the process would be shortened and simplified by drafting and perfecting our own plan, and that is what we did.

On February 4, we entered an order attaching our plan. Our order stated that we proposed to implement that plan absent the timely preclearance of the state court plan. We directed the parties to show cause by written objections, why this court's redistricting plan, if implemented, would not satisfy all state and federal statutory and constitutional requirements; and to make any other critical comments and suggestions with respect to the plan that the parties deemed appropriate.

On February 14, the Department of Justice requested additional information from State authorities, and advised that a new 60-day period would begin to run upon receipt of the requested information.

We now address the parties' objections and comments regarding our plan, and further explain the factors we considered, and how we applied them, in drafting our plan.

II. Objections and Comments of the Parties

A. Plaintiffs' Comments

The Plaintiffs and the Mississippi Republican Executive Committee had no objections as such to our plan. They did, however, comment on our analysis of the plan, requesting an explanation of the legal significance of our decision to consider, as a secondary factor, the effort to include as much as possible of former districts 3 and 4 in the new District 3. We have done so in the analysis of the factors we considered, and how we applied them, *infra*.

The Plaintiffs and the Mississippi Republican Executive Committee also commented that our February 4 order did not explain what we meant by "the timely preclearance of the redistricting plan adopted by the State Chancery Court."

The Plaintiffs also assert that the plans they submitted satisfy all constitutional and statutory criteria and can be defended on neutral redistricting principles. The Plaintiffs presented four basic plans, as well as modified versions of each of them. After studying each of the Plaintiffs' plans and after considering all neutral criteria for drafting congressional redistricting plans, we found various flaws in each, including: the fragmentation of communities of interest, especially the community of interest represented by southwest Mississippi; compactness concerns; retrogression concerns; unnecessary outdistricting of one of the incumbents; unnecessary division of municipalities outside the City of Jackson; and unnecessary splits in voting precincts.

We now turn to address the objections of the Intervenors.

B. Intervenors' Objections and Comments

The Intervenors object to our plan on many grounds, most of which were raised prior to trial and in their post-trial brief. We will address each of those objections separately, in the order in which they were presented to us.

1. Adoption of Chancery Court Plan

The Intervenors contend that the plan adopted by the Chancery Court reflects state policy, and that we should defer to that plan. They make this argument even though the Chancery Court plan is not effective as law because it has not been precleared. In support, the Intervenors rely on *Upham v. Seamon*, 456 U.S. 37 (1982); *Terrazas v. Clements*, 537 F. Supp. 514 (N.D. Tex. 1982); *Burton v. Hobbie*, 543 F. Supp. 235 (M.D. Ala.), *aff'd*, 459 U.S. 961 (1982); and *Burton v. Hobbie*, 561 F. Supp. 1029, 1034 (M.D. Ala. 1983). In *Upham*, the Supreme Court stated:

> [W]henever adherence to state policy does not detract from the requirements of the Federal Constitution, we hold that a district court should similarly honor state policies in the context of congressional reapportionment. In fashioning a reapportionment plan or in choosing among plans, a district court should not pre-empt the legislative task nor intrude upon state policy any more than necessary.

Id. at 41-42 (internal quotation marks and citation omitted); *see also White v. Weiser*, 412 U.S. 783, 797 (1973) (the only limits

on judicial deference to state apportionment policy are the substantive constitutional and statutory standards to which such state plans are subject). At issue in *Upham* was a congressional redistricting plan that had been enacted by a state legislature. Although the United States Attorney General had objected to only part of that plan, the three-judge federal court disregarded not only the part of the plan to which the Attorney General had objected, but also parts of the plan to which no objection had been lodged. The Supreme Court held that a district court has no authority to disregard those portions of a state plan which have been approved by the Attorney General under § 5 of the Voting Rights Act. *Id.* at 43.

Terrazas addressed legislative redistricting plans for the Texas Senate and House of Representatives that had been adopted by the Texas Legislative Redistricting Board. The plans had been submitted to the United States Department of Justice, which had objected to parts of the plans and had approved the remaining parts. Under those circumstances, the court deferred to the state plan, except as to the portions of it that were objected to by the Department of Justice. *Id.* at 528. Similarly, a legislative plan was at issue in the *Burton* decisions. Under those circumstances, and consistent with *Upham*, *White*, and *Terrazas*, the Alabama district court ordered the implementation of the legislature's plan, with modification to one of the counties. 543 F. Supp. at 238-39.

The principle announced in *Upham* and *White*, and applied in *Terrazas* and *Burton*, does not apply in this case. This is true because, as of this date, no part of the plan adopted by the Chancery Court has been approved by the Attorney General. We think that, for purposes of deference, it is important to note that the plan adopted by the Chancery Court was drafted by the Intervenors (plaintiffs in Chancery Court), not by the Chancery

Court, and not by the Mississippi Legislature, which failed to enact a congressional redistricting plan. Accordingly, there is no expression, certainly no clear expression, of state policy on congressional redistricting to which we must defer. *See Carstens v. Lamm*, 543 F.Supp. 68, 78 (D. Colo. 1982) (where plan had been enacted by state legislature, but vetoed by governor, who submitted his own plan, court regarded those plans as "proffered current policy" rather than clear expressions of state policy); *Shayer v. Kirkpatrick*, 541 F. Supp. 922, 929 (W.D. Mo.) (plan not adopted by state legislature "can hardly be said to demonstrate any legislative intent other than a rejection of the plan"), *aff'd*, 456 U.S. 966 (1982).

Furthermore, as of the date of this opinion, the Chancery Court's plan has not been precleared, in whole or in part. In *United States v. Board of Supervisors of Warren County, Miss.*, 429 U.S. 642 (1977), the Supreme Court held that a three-judge court erred by adopting a plan that had not been precleared, because it exceeded the scope of its jurisdiction under § 5 of the Voting Rights Act. A three-judge court does not have jurisdiction to determine whether a covered change does or does not have the purpose or effect "of denying or abridging the right to vote on account of race or color." *See id.* at 645 (quoting *Perkins v. Matthews*, 400 U.S. 379, 385 (1971)).[2]

Because any state plan implemented for the 2002 elections must comply with § 5, it would appear that ordering implementation of the unprecleared state court plan would require us to make, at least implicitly, the forbidden

[2]On the other hand, the Supreme Court has directed that federal courts, in fashioning congressional redistricting plans, should follow appropriate § 5 standards. *See Abrams v. Johnson*, 521 U.S. 74, 96 (1997); *McDaniel v. Sanchez*, 452 U.S. 130, 149 (1981).

determination that the plan (and the Mississippi Supreme Court order, as well), comply with § 5. In their post-trial brief, the Intervenors argue that the plan adopted by the Chancery Court "does not retrogress and therefore complies with the substantive standards of Section 5, . . . does not dilute minority voting strength, and . . . is constitutional." As we have said, the Supreme Court has made it clear that we do not have jurisdiction to make such a determination.

Under § 5, our inquiry "is limited to the determination whether a voting requirement is covered by § 5, but has not been subjected to the required federal scrutiny." *Board of Supervisors*, 429 U.S. at 645-46 (internal quotation marks and citations omitted). We do not think that it can be seriously contested that the changes in state election law represented by the Mississippi Supreme Court's December 13 order granting jurisdiction to the Chancery Court, as well as in the redistricting plan adopted by the Chancery Court, are covered by § 5, and that they have not been precleared as of this date.[3]

[3]In a submission filed on February 15, following the Department of Justice's request for additional information from State authorities, the Intervenors argue that, if the 60-day deadline expires on February 25 without an objection by the Department of Justice, the Chancery Court plan will be precleared automatically. Although the Department of Justice has not sought additional information about the redistricting plan adopted by the Chancery Court, the letter from the Department to the Mississippi Attorney General makes clear that the Department cannot make a determination concerning the Chancery Court plan until it receives the requested information and makes a decision on whether to approve the assignment of jurisdiction to the Chancery Court. The letter states:

> Because the December 13, 2001, Order of the Mississippi Supreme Court . . . and the December 21 & 31, 2001 Orders of the Chancery Court which adopted a redistricting

Thus, until the state court plan has been precleared, we cannot defer to it.

2. Branch Plan 2B

Alternatively, the Intervenors urge us to order implementation of Branch Plan 2B, a slightly modified version of the Chancery Court plan, which reduces by two the number of split counties. They argue that our adoption of Branch Plan 2B would allow implementation of the state policies reflected in the Chancery Court plan without actually ordering that unprecleared plan into effect in its entirety.

We do not think this is the thing to do. At the trial before us, the Intervenors introduced no evidence that the neutral

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> plan, are directly related, it would be inappropriate for the Attorney General to make a determination concerning the congressional redistricting plan adopted by the Chancery Court.

The Intervenors argue, however, that a new 60-day period is not triggered because the information requested by the Department of Justice is unnecessary and irrelevant. We cannot agree. We think that the information requested by the Department of Justice is material and relevant in order for the Department of Justice to understand fully the extent and consequences of a chancery court adopting a United States congressional redistricting plan for the entire state when it has never been done before and when the Mississippi Supreme Court's declaration of jurisdiction seems to constitute a change in both case and statutory law. If this newly asserted change in redistricting authority is not precleared, it renders the plan itself a legal nullity under the Voting Rights Act. Thus, the Department of Justice's decision to investigate the change in state law that authorized the Chancery Court to adopt a redistricting plan, before considering the plan itself, does not constitute "unwarranted administrative conduct." *See Georgia v. United States*, 411 U.S. 526, 541 n.13 (1973).

factors applicable to federal court-ordered redistricting plans were considered in drafting either the plan adopted by the Chancery Court or Branch Plan 2B. Furthermore, based on the evidence presented in the Chancery Court and in the Intervenors' arguments to this court, it seems indisputable that political competitiveness played a major, if not controlling, role in determining how the districts were drawn in each of the plans. Finally, it is evident that compactness was not considered in drafting the plans submitted by the Intervenors. The absence of compactness is most evident in District 1, which includes a group of counties from the Tennessee line in the northernmost part of the State, joined only by a narrow corridor to the southern part of central Mississippi to include Rankin, Madison, and Scott Counties. It is essentially uncontested that political considerations are the only reasons for disregarding historical regional interests. For these reasons, we cannot accept the Branch 2B plan.

3. Postponement of Qualifying Deadline

The Intervenors argue, alternatively, that, if we do not utilize the plan adopted by the Chancery Court or Branch Plan 2B, we should postpone the qualifying deadline to await a preclearance decision. The Intervenors essentially are asking that we defer to the state policies reflected in the unprecleared plan adopted by the Hinds County Chancery Court, when, at the same time, we would have to cast aside the state policy adopted by the Mississippi Legislature when it enacted the statute setting the qualifying deadline.

As we explained in our order of January 15, we are convinced that a postponement of that deadline would likely create confusion, misapprehension and burdens for the voters, for the political parties, and for the candidates. As we said in

our order, many voters want to participate in the election process to a greater extent than mere voting. They want to know the candidates personally, to select their choice, to give money to their selection, and to organize the people in their precincts or counties in the campaign for their choice. Given that all previous districts are being cross-mixed by the loss of one congressional representative, resolving these new problems will take all the pre-primary time that the present statute allows. If we delay the establishment of election districts and advance qualifying dates, such voters who want to become fully involved in the process will not timely know in which district they are going to be placed, and thus will not timely know where and with whom to become involved. The same situation will exist for the candidates. Postponing the election schedule means that the candidates and political parties would encounter campaign and election burdens – that is, significant time constraints on getting acquainted with new voters, establishing organizations in new election districts and the multiple new precincts and counties therein, raising campaign funds within the new districts, developing strategies for particular geographic areas, etc.

Indeed, postponing the election schedule is inconsistent with the position taken in the Mississippi Attorney General's preclearance submission, which requests expedited consideration in order to allow candidates and voters fully to understand the newly enacted district lines prior to the March 1 qualifying deadline. Furthermore, changing the March 1 deadline is inconsistent with the position taken by the Intervenors in their amended complaint filed in Chancery Court, in which they assert that, if a plan is not adopted in time for it to be implemented in advance of the March 1 deadline, "the interests of the plaintiffs and all Mississippi voters in enforcement of Mississippi's election laws will be

compromised, and their rights under Mississippi law to participate in a congressional election process conducted in a timely manner will be violated." We also consider it significant that changing the deadline would contravene the Mississippi Supreme Court's recognition of the importance of such deadlines under state election law. *See Adams County Election Comm'n v. Sanders*, 586 So. 2d 829, 832 (Miss. 1991) (an election schedule that violates the state election code is adverse to the public interest).

In sum, we find that postponement of the qualifying deadline would be damaging to the rights of the voters, the candidates and the political parties, and would contravene established state policy that should be respected. We therefore decline to order postponement of the deadline in order to await a preclearance decision,[4] especially when we have no way of determining if and when preclearance will occur.

4. Black Voting Strength in District 3

The Intervenors object to this court's plan on the ground that it limits black voting strength in District 3. They raised this issue for the first time in their post-trial brief, in which they argued that we should attempt to draw District 3 with a higher percentage of black voting age population than that reflected in the plans submitted by the Plaintiffs. They note that, under the

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[4]On February 14, the Department of Justice requested additional information from State authorities, and indicated that a new 60-day period would begin to run upon the receipt of that information. It is, of course, possible that the Department of Justice can still act before the March 1 candidate qualification deadline. On the other hand, it is not implausible that the Department of Justice may take the full 60 days before making its decision. In any event, we decline to upset the established schedule for the election process which begins on March 1.

former five-district plan, the percentage of black voting age population in former district 4 is 42.94%, and in former district 3, 29.45%. Under this court's plan, the percentage of black voting age population in District 3 is 30.37%. The Intervenors complain that our plan dismantles the black population in former district 4, sending nearly 50% of it to District 2, and retaining only 42.5% of it in District 3, while in the plan adopted by the Chancery Court, only 38.6% of the black population in former district 4 went to the new district 2, and 52.7% of it stayed in the new district 3.

In drafting our plan, we considered race only to the extent that we are allowed to consider it in a redistricting case: The Voting Rights Act required that we draw District 2 with an appropriate percentage of black voting age population in order to assure minority voters a reasonable opportunity to elect their representative of choice. The Intervenors do not argue that our plan results in minority vote dilution in violation of § 2 of the Voting Rights Act. Nor do they claim that the Voting Rights Act requires the creation of a so-called "minority influence" district. *See Rural West Tennessee African-American Affairs Council, Inc. v. McWherter*, 877 F. Supp. 1096, 1101 (W.D. Tenn.) (defining an influence district as one in which the population "includes sufficient members of a minority group to influence substantially an election, but not enough to comprise a majority or super-majority as is necessary for a majority-minority district", and stating that such "an influence district exists when members of a minority group compose 25% or more of the voting-age population of a district", and "may also exist when a minority group consists of less than 25% of the voting-age population of a district"), *aff'd*, 516 U.S. 801 (1995).

The Supreme Court has stated that "federal courts may not

order the creation of majority-minority districts unless necessary to remedy a violation of federal law." *Voinovich v. Quilter*, 507 U.S. 146, 156 (1993); *see also Balderas v. Texas*, Civ. Action No. 6:01CV158, at 14 (E.D. Tex. 2001) (unpublished) ("We have no warrant to impose our vision of 'proper' restraints upon the political process beyond the constraints imposed by the Constitution or the Voting Rights Act."). The Intervenors cite no authority that would support our consideration of race beyond the extent required by §§ 2 and 5 of the Voting Rights Act. Consequently, we cannot accept the Intervenors' assertion that race should be a factor in drawing the lines for District 3. Even if we assume that the Supreme Court would hold in this case for the first time that the Voting Rights Act requires the creation of a minority "influence" district, the Intervenors have forfeited that claim by failing to raise it; furthermore, they have presented no evidence that would support the claim. To the extent that they are arguing that more minorities are required in District 3 to make the congressional race competitive for democratic candidates, political considerations are inappropriate for a federal court to consider when drafting a congressional redistricting plan. *See Balderas*, at 10 ("political gerrymandering, a purely partisan exercise, is inappropriate for a federal court drawing a congressional redistricting map"). Moreover, because a democratic congressman has been elected and re-elected in former district 5, in which the percentage of black voting age population (18.67% based on 2000 Census figures) is substantially lower than in District 3 in our plan, we are reluctant to accept the Intervenors' implicit assertion that a democratic candidate cannot be competitive in a district in which the percentage of black voting age population is only 30%.

In any event, as a practical matter, we find that it is not

possible for us to increase the percentage of black voting age population in District 3 without splitting counties and precincts unnecessarily, without sacrificing compactness, and without transgressing the requirements of the Voting Rights Act. It is certain that significant retrogression would result in District 2 if black voting age population is shifted from District 2 to increase the percentage of black voting age population in District 3. There are no large concentrations of black voting age population near the borders of Districts 1 and 4 that can be shifted to District 3 so as to increase substantially the percentage of black voting population in District 3. Indeed, the *only* way to increase the percentage of black voting age population in District 3 to the level in the plans submitted by the Intervenors is to remove Rankin County and southern Madison County from District 3, as was done in the plans submitted by the Intervenors. Under any plan of reasonable compactness, Rankin County and southern Madison County cannot be placed in District 2 without causing significant retrogression – that is, significantly lowering the percentage of black voting age population in District 2, which would be violative of § 5 of the Voting Rights Act. Rankin County and southern Madison County cannot be placed in District 4, because they are not adjacent to the border of District 4. They can be placed in District 1 only if a narrow corridor is created to join them with the northernmost counties in the State that reaches to the Tennessee line. To do so would not only violate the compactness principle, but it would also disregard historical regional interests and result in the placement of several large growth areas in a single district.

We thus overrule the Intervenors' objections, and turn now to explain the plan the court adopted in its February 4 order.

III. Court's Plan

The standards applicable to court-ordered congressional redistricting plans are fairly well-established: Courts must satisfy constitutional and statutory criteria and, to the extent feasible, certain neutral, secondary criteria.

A. Constitutional Criterion: Population Equality

The Supreme Court has held that the United States Constitution requires that each congressional district in a state contain equal population. *See Wesberry v. Sanders*, 376 U.S. 1, 18 (1964) (Art. I, § 2 of the Constitution requires that "as nearly as is practicable one man's vote in a congressional election is to be worth as much as another's."). Moreover, the Supreme Court has been an exceedingly strict taskmaster in requiring the lower courts to balance population among districts with precision. *See Kirkpatrick v. Preisler*, 394 U.S. 526, 531 (1969) ("[T]he 'as nearly as practicable' standard requires that the State make a good-faith effort to achieve precise mathematical equality. Unless population variances among congressional districts are shown to have resulted despite such effort, the State must justify each variance, no matter how small."); *Karcher v. Daggett*, 462 U.S. 725, 734 (1983) ("there are no *de minimis* population variations, which could practicably be avoided, but which nonetheless meet the standard of Art. I, § 2 without justification"). Nevertheless, the Court is "willing to defer to state legislative policies, so long as they are consistent with constitutional norms, even if they require small differences in the population of congressional districts," so long as it is shown "with some specificity that a particular objective required the specific deviations." *Id.* at 740-41.

In *Abrams v. Johnson*, 521 U.S. 74 (1997), the Court stated that "[c]ourt-ordered districts are held to higher standards of population equality than legislative ones," but that "[s]light deviations are allowed" if supported by "'historically significant state policy or unique features.'" *Id.* at 98 (quoting *Chapman v. Meier*, 420 U.S. 1, 26 (1975)). The court-ordered plan in *Abrams* had an overall population deviation (the difference in population between the two districts with the greatest disparity) of 0.35%, and an average population deviation (the average of all districts' deviation from perfect one-person, one-vote allocation) of 0.11%. *Id.* at 99. The district court enumerated the following state policies and conditions as justification for the deviations: (1) Georgia's strong historical preference for not splitting counties outside the Atlanta area; and (2) maintaining core districts and communities of interest. *Id.* at 99-100. The district court found that the small counties among Georgia's 159 counties represented communities of interest to a much greater degree than was common, and the Supreme Court agreed that "such a proliferation provides ample building blocks for acceptable voting districts without chopping any of those blocks in half." *Id.* at 100 (internal quotation marks and citation omitted). The Court observed that, even if it had found the population deviation unacceptable, it "would require some very minor changes in the court's plan – a few shiftings of precincts – to even out the districts with the greatest deviations." *Id.*

Thus, our task in drafting the map was to make every good-faith effort to place 711,164 people in each of two districts and 711,165 people in each of the other two districts, which is based on a total population of 2,844,658, according to 2000 Census figures. *See Karcher*, 462 U.S. at 738 ("because the census count represents the best population data available, it is the only basis for good-faith attempts to achieve population

equality" (internal quotation marks and citation omitted)). Obviously, this is not an easy task when, at the same time, we are trying to prevent retrogression in District 2 and trying not to make unnecessary divisions of counties and municipalities. Nevertheless, we have been able to achieve virtual equality: Districts 3 and 4 each contain 711,164 persons. District 1 contains 711,160 persons (five too few), and District 4 contains 711,170 persons (five too many). This seems to comply fully with the Supreme Court's requirements.[5]

In sum, our plan satisfies the constitutional standard of one-person, one-vote, as enunciated by the Supreme Court. Having concluded that we have satisfied the constitutional criteria, we now turn to consider the statutory requirements.

B. Statutory Criteria

The two statutes we have to consider are §§ 2 and 5 of the Voting Rights Act. *See Abrams*, 521 U.S. at 90 ("On its face, § 2 does not apply to a court-ordered remedial redistricting plan, but we will assume courts should comply with the section when exercising their equitable powers to redistrict."); *id.* at 96 (application of § 5 standards to a court-ordered plan "is a reasonable standard, at the very least an equitable factor to take into account, if not as a statutory mandate"); *McDaniel v. Sanchez*, 452 U.S. 130, 149 (1981) (although court-devised plans are not subject to preclearance requirements, "in fashioning the plan, the court should follow the appropriate Section 5 standards, including the body of administrative and

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[5]In order to achieve absolute perfection, we would have to split precincts. We find, based on the testimony of Sue Sautermeister, that splitting precincts would cause administrative problems for election officials and confusion and frustration for voters.

judicial precedents developed in Section 5 cases").

1. Section 2 of the Voting Rights Act

Section 2 of the Voting Rights Act prohibits any voting procedure that "results in a denial or abridgement of" the voting rights of a person on account of race, color, or membership in a language minority. 42 U.S.C. § 1973(a). A violation of § 2 is established by showing that "based on the totality of the circumstances," members of a protected class "have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." 42 U.S.C. § 1973(b).

As we have earlier noted in addressing their objections, the Intervenors object to our plan on the ground that it limits black voting strength in District 3, but they do not argue that our plan violates § 2. Nevertheless, as the Supreme Court has instructed federal redistricting courts to do, we have considered § 2 in drafting our plan. The minority population in Mississippi is sufficiently large and geographically compact to constitute a majority in only one of Mississippi's four congressional districts. *See Thornburg v. Gingles*, 478 U.S. 30, 50-51 (1986) (setting forth elements of vote dilution challenge to multimember districts); *see also Growe v. Emison*, 507 U.S. 25, 40-41 (1993) (*Gingles* elements for vote dilution claim apply in challenges to single-member districts). Our plan creates a majority-minority district, District 2. Accordingly, we conclude that it does not result in minority vote dilution in violation of § 2. Consequently, we move on to discuss § 5.

2. Section 5 of the Voting Rights Act

The requirements of § 5 focus our attention first and primarily on District 2, in order to assure that our plan does not result in significant retrogression in the position of minorities with respect to their opportunity to elect their representative of choice. *See Puerto Rican Legal Defense & Education Fund, Inc. v. Gantt*, 796 F. Supp. 681, 691 (E.D.N.Y. 1992) ("a court-drawn plan should be drafted so that it will not lead to retrogression in the position of a racial or language minority group with respect to their opportunity to exercise the electoral franchise effectively").

The percentage of black voting age population in district 2 under the former five-district plan, based on 2000 Census figures, is approximately 61%. Under our plan, the percentage of black voting age population in District 2 is 59.2%. This does not constitute retrogression in the voting rights of minorities in violation of § 5.

In sum, we are thus satisfied that our plan satisfies the criteria of all applicable federal statutes. We now turn to discuss the secondary criteria that we considered in drafting our plan.

C. Secondary Criteria

In addition to the constitutional and statutory criteria, federal redistricting courts generally apply neutral factors, including compactness, contiguity, and respect for historical local political boundaries, in drafting congressional redistricting plans. *See Balderas*, at 5; *Gantt*, 796 F. Supp. at 685.

Based on the evidence presented to us, we applied the following secondary factors, listed in the order of priority given to each factor: (1) compactness and contiguity; (2) respect for county and municipal boundaries; (3) preservation of historical and regional interests; (4) placement of the major research universities and military bases, respectively, in separate districts; (5) placement of at least one major growth area in each district, and avoidance of placement of several major growth areas in the same district, so as to minimize population deviation among the districts as Mississippi's population changes; (6) inclusion of as much as possible of southwest Mississippi from former district 4, and east central Mississippi from former district 3, in the new District 3; (7) protection of incumbent residences; and (8) consideration of the distances of travel within each district. We now turn to explain further how we applied each of the factors we considered in drafting our plan.

1. Compactness and Contiguity

"The compactness requirement specifies that the boundaries of each congressional district shall be as short as possible." *Carstens*, 543 F. Supp. at 87. The contiguity requirement "specifies that no part of one district be completely separated from any other part of the same district." *Id.* at 88 (internal quotation marks and citation omitted). These criteria "were originally designed to represent a restraint on partisan gerrymandering." *Id.* at 87; *see also Arizonans for Fair Representation v. Symington*, 828 F. Supp. 684, 688 (D. Ariz. 1992) ("Districts that are geographically compact and contiguous are less likely to suffer from the ills of gerrymandering [and] assist in maintaining communities of interest"), *aff'd*, 507 U.S. 981 (1993).

"In addition to serving as a check on gerrymandering,

compactness 'facilitates political organization, electoral campaigning, and constituent representation.'" *Good v. Austin*, 800 F. Supp. 557, 563 (E.D. & W.D. Mich. 1992) (quoting *Karcher*, 462 U.S. at 756 (Stevens, J., concurring)); *Carstens*, 543 F. Supp. at 87 ("Compact districts . . . reduce electoral costs (in both time and money) and increase the opportunities for more effective representation by concentrating a congressperson's constituency in an easily accessible area."). "In a practical sense, the compactness of a congressional district will be directly affected by the density and distribution of a state's population. Since population requirements have priority, compactness must often be sacrificed in order to achieve an acceptable range of population deviation." *Id.*

This court has attempted to achieve, as nearly as possible, four compact districts. The ability to create compact districts in Mississippi is limited by the distribution of population. Much of the State is rural, with large concentrations of population in only a few areas of the State. Districts that contain many sparsely populated counties and large rural areas necessarily will be less compact than districts that contain heavily populated counties and urban areas, as a result of the population equality requirement. Furthermore, a more compact plan cannot be drawn for two additional reasons: First, it would not be possible to do so and to prevent retrogression in District 2; and secondly, it would be a barrier to including as much as possible of the former districts 3 and 4 in the new District 3.

2. Respect for County and Municipal Boundaries

As Justice Stevens observed in his concurring opinion in *Karcher*,

> [s]ubdivision boundaries tend to remain stable over time. Residents of political units such as townships, cities, and counties often develop a community of interest, particularly when the subdivision plays an important role in the provision of governmental services. In addition, legislative districts that do not cross subdivision boundaries are administratively convenient and less likely to confuse the voters.

Karcher, 462 U.S. at 758 (Stevens, J., concurring).

To the extent possible, consistent with the constitutional and statutory requirements, federal redistricting courts attempt to preserve local political boundaries – city and county lines. *See Balderas*, at 7; *Arizonans*, 828 F. Supp. at 688 ("a state has a substantial interest in preserving city and county lines" because of "the importance of shared local experiences and the ability of groups and candidates to 'network' within their communities'"; furthermore, "[p]reserving these communities of interest also enables a congressman to represent his constituency better"); *Carstens*, 543 F. Supp. at 88 (county and municipal boundaries "should remain undivided whenever possible because the sense of community derived from established governmental units tends to foster effective representation"). "Unnecessary fragmentation of these units not only undermines the ability of constituencies to organize effectively but also . . . increases the likelihood of voter confusion regarding other elections based on political subdivision geographics." *Id.* (internal quotation marks and citation omitted). We turn now to address these concerns as

they apply to the redistricting map that we have drawn.

We should first note that the priority given to the constitutional requirement of population equality makes the division of some counties unavoidable. *See Balderas*, at 16 ("It is an ugly fact that the law's insistence on absolute population equality in court-drawn plans has the perverse effect of splitting counties and cities, when a tolerance of greater deviation would not demand such undesirable divisions."). Our plan splits eight counties: Hinds, Jasper, Jones, Leake, Madison, Marion, Webster, and Winston. We do observe, however, that eleven counties are split under the five-district congressional redistricting plan adopted by the Mississippi Legislature in 1992.

Under the five-district plan, Jasper County is in district 3, and Marion County is in district 4. Our plan splits each of these counties, placing part of each in District 3 and the remainder in District 4. This was done as part of the effort to create a compact new District 4, as well as to equalize, as nearly as practicable, the population among the districts. In dividing these counties, we also took into consideration our attempt to combine as much of former districts 3 and 4 in new District 3 as is feasible, as we later explain. In making these divisions, we made every effort to respect the boundaries of municipalities. Jasper County is split in a particular way so as to avoid splitting the precincts which lie within the boundaries of the town of Bay Springs.

Hinds and Madison Counties are split as part of the effort to achieve population equality. In addition, it was necessary to split these counties so as to prevent retrogression in District 2. If we had included these areas, which have a majority white population, in District 2, that district would have had a

significantly lower percentage of black voting age population. We could not have placed these portions of Hinds and Madison Counties in District 4, because it is not contiguous to them. Furthermore, we could not have placed them in District 1 without ignoring completely the compactness requirement.

We did split the City of Jackson in Hinds County. It is the only municipality that is split. However, Mayor Johnson testified in Chancery Court that he preferred that the City be represented by two congresspersons. In addition, as we have earlier noted with respect to why Hinds County was split, it was also, necessary to split the City of Jackson to prevent retrogression in District 2.

Leake County is also split as part of the effort to prevent retrogression in District 2, and to help achieve population equality among the districts. The irregularity of the border is explained by our effort to keep all of the precincts which lie within the municipal boundaries of the City of Carthage in the same district.

Jones County is split so as not to remove the incumbent from his district and also to help achieve population equality.

Webster County is split to avoid dividing the town of Maben, which lies partially in Oktibbeha County and partially in Webster County, among two districts.

Winston County is split solely to achieve the maximum possible equality of population among the districts.

In sum, the county splits are necessitated by: the population equality requirement; preservation of the majority-minority district with an appropriate percentage of black voting

age population; combining as much as possible of former districts 3 and 4 in the new District 3; and avoiding having incumbents districted out of their residences.

3. Historical and Regional Interests

In addition to the communities of interest represented by counties and municipalities, there are other communities of interest "which share common concerns with respect to one or more identifiable features such as geography, demography, ethnicity, culture, socio-economic status or trade." *Carstens*, 543 F. Supp. at 91. "[T]he preservation of regional communities of interest within a single district enhances the ability of constituents with similar regional interests to obtain effective representation of those interests." *Good v. Austin*, 800 F. Supp. at 564.

Based on the evidence presented at trial, it became apparent that there are distinct communities of interest represented by the geographical regions of the State, which are reflected in the former five-district congressional redistricting plan. Because we were reducing the districts from five to four, respecting each regional community of interest became problematic when we were required to combine two districts into a single district. At the outset, § 5 of the Voting Rights Act dictated that the protected majority-minority district be drawn first. There was very little choice as to the placement of that district, because the largest concentration of black voting age population is in the Delta and along the Mississippi River. Once we had drawn that district, the compactness principle argued that the remainder of the State be divided into a northern district, a central district, and a southern district – at least to the extent possible and practicable. Based on the distribution of the population within the State, it became further

apparent that it would be necessary to include both southwest Mississippi (located in former district 4) and east central Mississippi (located in former district 3) in the same district.

In sum, we strove to respect the communities of interest represented in the former five-district plan, to the extent other more compelling circumstances allowed. In applying this factor, we considered only the interests of the residents of Mississippi, and not those of the incumbent congresspersons. In sum, given the constraints of population equality, our plan preserves as much as possible the cores of the Mississippi River/Delta region, east central Mississippi, southwest Mississippi, north Mississippi, and the Gulf Coast region.

4. Universities and Military Bases

The evidence at trial was undisputed that the four major research universities (the University of Mississippi, Jackson State University, Mississippi State University, and the University of Southern Mississippi) should be placed in separate districts so that they will not have to compete for federal funding. Our plan achieves that goal.

Under the former five-district plan, the military bases in Lowndes and Lauderdale Counties were located in former district 3. Several witnesses testified at trial regarding the importance of the military bases to the State's economy, and that it would be preferable to place those bases in separate districts so that, if both were targeted for closure, each would have a separate congressperson working to prevent closure. We found this testimony to be persuasive: A congressperson with only one military base in his or her district is much more likely to be successful in preventing its closure than a congressperson who has two military bases in his or her

district. Our plan is therefore drawn with due consideration that the military bases located in Lowndes, Lauderdale, and Harrison Counties are in separate districts.

5. Growth Areas

Although much of Mississippi is rural, there are several high-growth areas. The largest of these growth areas are in DeSoto County in north Mississippi, in Hancock, Harrison, and Jackson Counties in south Mississippi, and in Hinds, Rankin, and Madison Counties in central Mississippi. We found persuasive the testimony at trial regarding the undesirability of placing several high-growth areas in the same district, because of the competition for federal funding for infrastructure. In addition, as population growth continues over time, placement of too many high-growth areas in the same district would result in malapportionment much more quickly than it would if the growth areas are distributed evenly among the districts. Accordingly, our plan is drawn with consideration that each district has at least one major growth area. District 1 contains DeSoto County, as under the former five-district plan. District 2 contains the Nissan Plant/Gluckstadt area of Madison County, as under the former five-district plan, and almost all of Hinds County, including much of the City of Jackson and the Byram and Clinton areas. District 3 contains southern Madison County and Rankin County. District 4 contains the Gulf Coast area.

6. Combination of Former Districts 3 and 4

As noted, protection of the majority-minority district as required by § 5 of the Voting Rights Act, and application of the compactness principle, dictated that the new District 3 contain a combination of the southwestern portion of the State, which

was located in former district 4, and the east central portion of the State, which was located in former district 3. Accordingly, in drawing the new District 3, consideration was given to including as much of the former districts 3 and 4 in the new combined District 3 as possible, subject to the constraints of the population equality principle, the prevention of retrogression in District 2, and the neutral requirement of compactness. It seemed to us that combining old districts 3 and 4 as much as possible would have the initial effect, in our map-drawing efforts, of being less disruptive to the other three established districts as we redrew their respective lines. We also concluded that combining the two districts to the extent possible helped to achieve compactness of the new District 3, as well as the other new districts. At the core of our reasoning, however, was an attempt to preserve intact, as much as possible, the communities of interest in southwest, east central, and central Mississippi.

The new District 3 contains all or part of fourteen counties from each of the former districts 3 and 4, respectively.

The new District 3 includes the portion of Jones County which contains the residence of the incumbent for former district 3. It includes all or part of fourteen of the nineteen counties included within former district 3: Jasper, Jones, Kemper, Lauderdale, Leake, Madison, Neshoba, Newton, Noxubee, Oktibbeha, Rankin, Scott, Smith, and Winston. It is, however, necessary to eliminate: the portions of Attala County and Wayne County that are in former district 3 for concerns of retrogression and population equality, respectively; and all of Clarke, Clay, and Lowndes Counties, primarily because of population equality.

The new District 3 includes all of Jefferson Davis County,

which contains the residence of the incumbent for former district 4. It includes all or part of fourteen of the fifteen counties that were included within former district 4: Adams, Amite, Covington, Franklin, Hinds, Jefferson Davis, Jones, Lawrence, Lincoln, Marion, Pike, Simpson, Walthall, and Wilkinson. It is, however, necessary to eliminate Copiah County for reasons of population equality with District 2 and to prevent retrogression of voting rights of black residents of District 2.

7. Protection of Incumbent Residences

The only political consideration that we took into account in drafting our plan was to assure that no incumbent would be required to move in order to run in the district in which he resides. *See Arizonans*, 828 F. Supp. at 688 (court should avoid unnecessary or invidious outdistricting of incumbents, because "maintenance of incumbents provides the electorate with some continuity").

8. Distance of Travel Within Districts

After consideration of all of the above factors, we considered traveling distances within the districts. However, we recognized that application of the compactness principle generally minimizes the distance of travel within each congressional district. Nevertheless, we took into consideration the existing roads and highways in the State, and how that would affect the ability of a candidate, and ultimately the elected representative, to travel throughout his or her district. As is expected to occur when the number of districts is reduced from five to four, the distances of travel within the districts are increased.

The distance of travel within District 1 is approximately the same size as under the plans submitted by the Plaintiffs, and is substantially less than it is under the plans submitted by the Intervenors. The new District 2 is slightly larger than former district 2, but this is unavoidable in the light of the population deficit in former district 2, which grew more slowly than any other district in the State. We recognize that travel distances in the new District 3 are considerably greater than in either of the former districts 3 and 4. The distance of travel within new District 3 is dictated by our combining much of former districts 3 and 4 (which we have previously explained), as well as by the effort to keep the four major research universities in separate districts. The distance of travel in District 3 under our plan is, however, not as great as it is in the plans submitted by the Intervenors. The distance of travel in new District 4 is slightly greater than it is in former district 5. This is necessitated by the population equality principle as well as by our effort to include in District 3 as much of former district 4 as is feasible. The distance of travel within new District 4 is substantially less than that within district 4 in some of the plans submitted by the Plaintiffs.

Conclusion

In sum, the court has attempted to apply all appropriate neutral factors that are recognized by the United States Supreme Court and federal redistricting courts. As noted, these factors include, first, the constitutional demand for population equality among the districts, and secondly, the Voting Rights Act requirement that one equally populated district be drawn to include a majority of black residents of voting age. While respecting county, city and precinct lines and the compactness of each district, the court sought to give appropriate weight to the following factors: respect for historical and regional

interests to the extent feasible; placement of growth areas, research universities and military bases in separate districts if otherwise practicable; inclusion of as much as possible of the former districts 3 and 4, representing the communities of interest in southwest and east central Mississippi, in the new District 3; avoiding the outdistricting of incumbents; and minimizing travel distances within the districts, consistent with the other requirements. When all feasible adjustments were made for these factors, further adjustments were necessary to satisfy one person-one vote requirements, and retrogression concerns.

IV. Effective Date of Plan

The Attorney General of Mississippi submitted the plan adopted by the Chancery Court, as well as the Mississippi Supreme Court's December 13 order holding that the Chancery Court had jurisdiction to adopt a congressional redistricting plan, to the United States Attorney General for preclearance on December 26, 2001, and requested expedited preclearance by January 31, 2002. The plan adopted by the Chancery Court cannot be implemented unless the Attorney General of the United States "has interposed no objection within a 60-day period following submission." 28 C.F.R. § 51.1(2). The initial 60-day period was to end on February 25, 2002. *See* 28 C.F.R. § 51.9. However, on February 14, the Department of Justice requested additional information and indicated that a new 60-day period would begin to run upon the receipt of that information. The deadline for congressional candidates to qualify to run for Congress in 2002 is March 1. *See* Miss. Code Ann. § 23-15-299(3).

A three-judge district court in New York was faced with a situation similar to the one before this court. *See Gantt*, 796 F.

Supp. 681. After the special master appointed by the court had filed his proposed plan, the New York Legislature enacted a redistricting plan, which was signed by the Governor and submitted for preclearance. The court was faced with a July 9, 1992 deadline under state law for candidates to begin gathering signatures on petitions. Under those circumstances, while preclearance of the legislature's plan was pending before the Department of Justice, the court ordered that, if the plan adopted by the New York Legislature had not been precleared by 5:00 p.m. on July 8 (the day before the signature-gathering deadline), the special master's plan would be used for the 1992 congressional elections. *Id.* at 686, 697. In short, the court made clear that it did not have to wait on preclearance before it acted in order to assure that the election process proceeded on schedule.[6]

The Intervenors have urged us not to enjoin implementation of the plan adopted by the Chancery Court, and not to order that our plan be implemented, until after the expiration of the 60-day period. In addition, they have argued that we should postpone the qualifying deadline if the Attorney General requests more information or objects to the plan adopted by the Chancery Court. As we have earlier noted, such a request for additional information was made on February 14. Furthermore, the Intervenors have indicated that they intend to seek immediate relief from the Supreme Court of the United States if this court does not accept their contentions.

Nevertheless, for the reasons we have already stated, we

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[6]As it turned out, the Department of Justice precleared the state legislature's plan one week before the signature-gathering deadline. *See Puerto Rican Legal Defense & Education Fund, Inc. v. Gantt*, 796 F. Supp. 698, 698 (E.D.N.Y. 1992).

decline to postpone the qualifying deadline. It has been the position of this court – which has been expressly conveyed to the parties, first as early as November 30, 2001, and several times since then – that this court did not intend to postpone the election process which begins on March 1. In short, everyone understood that some plan must be in place, upon which all of the parties and the voters could rely, on or before March 1. We assume that the Department of Justice has been aware of this position, at least since it received the preclearance submission on December 26, 2001. Indeed, we note that, in Hinds County Chancery Court, the Intervenors argued that a plan had to be precleared "at least a couple of weeks before March 1."

The plaintiffs and the Mississippi Republican Executive Committee have argued that, because potential candidates need time to evaluate the new district lines and to make their decisions, this court's plan should take effect if the Chancery Court plan has not been precleared by February 15. In addition, the Plaintiffs argue that, if we wait until the expiration of the 60-day preclearance period, we will have insufficient time to consider and rule on their claims that, (1) even if the Mississippi Supreme Court's order authorizing the Chancery Court to adopt a redistricting plan, as well as the plan adopted by the Chancery Court, are ultimately precleared, we should nevertheless enjoin implementation of the Chancery Court's plan, because subsequent preclearance does not cure the violation of § 5 that occurred when the Chancery Court acted on the basis of an unprecleared change in state election law; and (2) irrespective of whether the state court plan is precleared, the Chancery Court's adoption of a plan usurps authority constitutionally delegated only to the Mississippi Legislature, in violation of Article I, § 4 of the United States Constitution, which provides, in relevant part, that "The Times, Places and Manner of Holding Elections for Senators and

Representatives, shall be prescribed in each State by the Legislature thereof . . ."[7]

We also recognize that voters, as well as potential candidates, are experiencing confusion and frustration as a result of the uncertainties as to which redistricting plan ultimately will be implemented. We are further cognizant of the difficulties faced by persons wishing to run for Congress as independents. An individual who wishes to be placed on the ballot as an independent candidate is required to file a petition containing the signatures of not less than 200 qualified electors in the district in which he or she intends to run for office. *See* Miss. Code Ann. § 23-15-359(1)(c). The petition must be filed with the State Board of Election Commissioners no later than 5:00 p.m. on the qualifying deadline. *See* Miss. Code Ann. § 23-15-359(3). If the boundaries of the districts are uncertain until the close of business on February 25, persons who wish to run for Congress as independents would have only three days during which to gather and to present the necessary signatures to ensure their placement on the ballot.[8]

Nevertheless, we have determined that it would be premature to order the implementation of this court's plan until

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[7]We consider this question to raise a serious constitutional issue, that is, whether there must be *some* legislative source that connects the state redistricting body to its authority to redistrict a state for United States congressional elections. For example, in *Growe v. Emison*, the Minnesota Supreme Court, in appointing a special redistricting panel, relied on authority granted by specific (but admittedly vague) statutes.

[8]We recognize the possibility that individuals who wish to run as independent candidates may be inconvenienced by having only three days to gather signatures. We do note, however, that there are some counties that will be in the same districts under the plan adopted by the Chancery Court and under this court's plan.

the Department of Justice has had the full initial 60-day period to preclear the plan adopted by the Chancery Court, and the Mississippi Supreme Court order that authorized the Chancery Court to act. Accordingly, we hold that, if the Chancery Court plan has not been precleared before the close of business on Monday, February 25, 2002, the congressional redistricting plan attached to our order of February 4, 2002, shall operate as the plan for congressional districts for the State of Mississippi for the 2002 congressional elections, and, on February 26, 2002, an injunction shall be entered directing the defendants to conduct the 2002 congressional elections pursuant to the congressional redistricting plan attached to our February 4 order.

SO ORDERED, this, the 19th day of February, 2002.

/s/ E. Grady Jolly
E. GRADY JOLLY
United States Circuit Judge

/s/ Henry T. Wingate
HENRY T. WINGATE
United States District Judge

/s/ David C. Bramlette
DAVID C. BRAMLETTE
United States District Judge

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

JOHN ROBERT SMITH,
SHIRLEY HALL, AND
GENE WALKER
PLAINTIFFS

V. CIVIL ACTION NO. 3:01-CV-855WS

ERIC CLARK, Secretary of State
of Mississippi; MIKE MOORE,
Attorney General for the State
of Mississippi; RONNIE MUSGROVE,
Governor of Mississippi; MISSISSIPPI
REPUBLICAN EXECUTIVE COMMITTEE; AND
MISSISSIPPI DEMOCRATIC EXECUTIVE
COMMITTEE
DEFENDANTS

(Filed Feb. 4, 2002)

ORDER

Attached hereto is this court's congressional redistricting plan for the State of Mississippi, along with an analysis thereof. This court proposes to implement this plan absent the timely preclearance of the redistricting plan adopted by the State Chancery Court, which is now pending for preclearance before the United States Attorney General.

The parties are hereby directed to show cause by written objections, why this court's redistricting plan, if implemented,

would not satisfy all state and federal statutory and constitutional requirements; and to make any other critical comments and suggestions with respect to the plan that the parties deem appropriate. Said objections, comments and suggestions must be filed with the Clerk of the United States District Court for the Southern District of Mississippi no later than 4:00p.m. on Friday, February 9. Failure to object in accordance with this order will be deemed a waiver of all further objections to this plan.

So ORDERED, this the 4th day of February, 2002.

/s/ E. Grady Jolly
E. GRADY JOLLY
UNITED STATES CIRCUIT JUDGE

/s/ Henry T. Wingate
HENRY T. WINGATE
UNITED STATES DISTRICT JUDGE

/s/ David C. Bramlette, III
DAVID C. BRAMLETTE, III
UNITED STATES DISTRICT JUDGE

Congressional Redistricting Plan
Smith v. Clark
United States District Court
Southern District of Mississippi
February 4, 2002

BEST AVAILABLE COPY

Plan: Congressional Redistricting Plan
Plan Type:
Administrator:
User:

Population Summary Report

Monday, February 4, 2002 7:54 AM

DISTRICT	POPUL.	DEVIATION	% Devn.	[18+_Pop]	[18+_Blk]	[%18+_Blk]
1	711,160	-5	0.00	521,745	124,207	23.81%
2	711,164	-1	0.00	501,887	297,121	59.20%
3	711,164	-1	0.00	523,593	158,994	30.37%
4	711,170	5	0.00	522,246	104,937	20.09%

Total Population: 2,844,658
Ideal District Population: 711,165

Summary

Population Range:	711,160 or 711,170
Ratio Range:	1.00
Absolute Range:	-5 to 5
Absolute Overall Range:	10.00
Relative Range:	0.00% to 0.00%
Relative Overall Range:	0.00%
Absolute Mean Deviation:	3.00
Relative Mean Deviation:	0.00%
Standard Deviation:	4.12

Political Subdivisions Split Between Districts

Monday, February 4, 2002 7:50 AM

Number of subdivisions not split:
County 74

Number of subdivisions split into more than one district:
County 8

Number of subdivision splits which affect *no* population:
County 0

Split Counts

County

Cases where a County is split among 2 Districts: 8

Number of times a County has been split into more than one district: 8

Total of County splits: 16

County	District	Population
Split Counties:		
Hinds	2	218,968
Hinds	3	31,832
Jasper	3	7,212
Jasper	4	10,937
Jones	3	2,235
Jones	4	62,723

Leake	2	11,361
Leake	3	9,579
Madison	2	27,631
Madison	3	47,043
Marion	3	9,742
Marion	4	15,853
Webster	1	9,544
Webster	3	750
Winston	1	134
Winston	3	20,026

Plan Components Report

Monday, February 4, 2002 8:02 AM

	Population	[18+ Pop]	[18+ Blk]
District 1			
Alcorn County	34,558	26,310	2,645
Benton County	8,026	5,867	1,942
Calhoun County	15,069	11,270	2,892
Chickasaw County	19,440	13,874	5,196
Choctaw County	9,758	7,044	1,934
Clay County	21,979	15,643	8,129
DeSoto County	107,199	77,005	8,063
Grenada County	23,263	16,945	6,385
Itawamba County	22,770	17,257	1,065
Lafayette County	38,744	31,170	6,908
Lee County	75,755	54,793	11,904
Lowndes County	61,586	43,963	16,500
Marshall County	34,993	25,695	12,185
Monroe County	38,014	27,673	7,757
Panola County	34,274	24,193	10,518
Pontotoc County	26,726	19,351	2,527
Prentiss County	25,556	19,170	2,330
Tate County	25,370	18,502	5,385
Tippah County	20,826	15,620	2,297
Tishomingo County	19,163	14,724	465
Union County	25,362	18,783	2,554
Webster County			
VTD: Bellefontaine	550	413	44
VTD: Big Black	420	301	5
VTD: Bluff Springs	287	210	96
VTD: Cadaretta	227	191	22
VTD: Clarkson	673	492	38

VTD: Cumberland	505	359	65
VTD: Eupora 1	1,440	1,011	517
VTD: Eupora 2	701	537	73
VTD: Eupora 3	881	672	115
VTD: Fame	489	372	8
VTD: Fay	219	166	12
VTD: Grady	409	310	40
VTD: Mantee	572	454	39
VTD: Mathiston	897	656	79
VTD: North Walthall	263	190	7
VTD: South Walthall	302	228	44
VTD: Tomnolen	709	517	63
Webster County Subtotal	**9,544**	**7,079**	**1,267**
Winston County			
VTD: Gum Branch	134	103	12
Winston County Subtotal	**134**	**103**	**12**
Yalobusha County	13,051	9,711	3,347
District 1 Subtotal	**711,160**	**521,745**	**124,207**
District 2			
Attala County	19,661	14,562	5,321
Bolivar County	40,633	28,587	17,107
Carroll County	10,769	8,134	2,788
Claiborne County	11,831	8,724	7,145
Coahoma County	30,622	20,514	13,183
Copiah County	28,757	21,014	9,939
Hinds County			
VTD: 1	297	251	143

VTD: 10	731	546	526
VTD: 11	984	745	698
VTD: 12	1,062	764	758
VTD: 13	1,309	955	942
VTD: 15	488	410	67
VTD: 16	2,132	1,530	1,115
VTD: 18	1,227	899	858
VTD: 19	1,148	854	845
VTD: 2	940	710	695
VTD: 20	1,880	1,237	1,213
VTD: 21	1,022	637	573
VTD: 22	2,605	1,817	1,770
VTD: 23	2,484	1,680	1,672
VTD: 24	2,382	1,345	1,195
VTD: 25	2,463	1,511	1,394
VTD: 26	1,328	844	709
VTD: 27	1,931	1,512	1,492
VTD: 28	2,053	1,630	1,612
VTD: 29	1,037	804	799
VTD: 30	1,426	995	984
VTD: 31	1,939	1,452	1,438
VTD: 38	1,442	1,007	562
VTD: 39	1,695	1,154	1,061
VTD: 4	1,121	743	732
VTD: 40	2,391	1,752	1,683
VTD: 41	2,818	2,004	1,965
VTD: 42	3,156	2,319	1,791
VTD: 43	4,359	2,968	2,350
VTD: 47	3,107	2,444	2,015
VTD: 5	1,995	1,702	725
VTD: 50	968	706	648
VTD: 51	1,013	677	662
VTD: 52	2,319	1,598	1,536
VTD: 53	585	391	374

VTD: 54	1,149	887	742
VTD: 55	1,848	1,226	1,127
VTD: 56	1,027	610	586
VTD: 57	1,436	940	910
VTD: 58	2,025	1,477	1,428
VTD: 59	3,079	1,797	1,730
VTD: 6	2,314	1,751	936
VTD: 60	987	597	545
VTD: 61	2,406	1,524	1,429
VTD: 62	2,545	1,631	1,430
VTD: 63	1,062	772	763
VTD: 64	1,101	821	800
VTD: 66	231	160	158
VTD: 67	2,186	1,408	1,191
VTD: 68	4,122	2,842	1,767
VTD: 69	2,083	1,340	841
VTD: 70	1,230	774	388
VTD: 71	2,069	1,391	698
VTD: 72	2,477	1,506	865
VTD: 73	1,887	1,367	570
VTD: 74	1,597	1,099	406
VTD: 75	1,430	943	423
VTD: 76	2,526	1,891	474
VTD: 77	2,601	1,798	596
VTD: 80	3,625	2,332	2,135
VTD: 81	2,131	1,614	1,477
VTD: 82	2,252	1,564	1,495
VTD: 83	4,481	3,123	2,854
VTD: 84	420	326	295
VTD: 85	3,943	2,759	2,733
VTD: 86	2,615	1,506	1,407
VTD: 87	2,095	1,381	957
VTD: 88	2,927	2,091	1,614
VTD: 89	2,114	1,433	902

VTD: 90	1,666	1,213	494
VTD: 91	3,212	2,090	1,643
VTD: 92	3,598	2,481	1,106
VTD: 93	1,845	1,293	773
VTD: 94	3,657	2,442	1,830
VTD: 95	910	657	179
VTD: 96	2,828	2,143	713
VTD: 97	659	486	109
VTD: Bolton	1,894	1,406	938
VTD: Brownsville	754	556	315
VTD: Byram 1	4,541	3,264	471
VTD: Byram 2	2,063	1,567	168
VTD: Cayuga	491	375	218
VTD: Chapel Hill	1,378	980	454
VTD: Clinton 1	4,406	3,713	543
VTD: Clinton 2	5,301	3,717	558
VTD: Clinton 3	4,439	3,352	740
VTD: Clinton 4	2,201	1,602	192
VTD: Clinton 5	1,590	1,231	57
VTD: Clinton 6	3,697	2,710	714
VTD: Cynthia	1,005	714	516
VTD: Dry Grove	1,076	798	221
VTD: Edwards	3,715	2,552	1,893
VTD: Jackson State	1,658	1,596	1,579
VTD: Learned	924	661	308
VTD: Old Byram	2,930	2,183	201
VTD: Pinehaven	2,749	1,932	823
VTD: Pocahontas	620	483	310
VTD: Raymond 1	3,346	2,237	911
VTD: Raymond 2	4,264	3,595	1,316
VTD: Spring Ridge	4,297	3,045	1,070
VTD: St. Thomas	560	390	374
VTD: Terry	5,242	3,958	1,442
VTD: Tinnin	901	611	143

VTD: Utica 1	1,297	953	388
VTD: Utica 2	1,396	965	732
Hinds County Subtotal	**218,968**	**155,226**	**98,716**
Holmes County	21,609	14,670	10,899
Humphreys County	11,206	7,541	5,052
Issaquena County	2,274	1,645	962
Jefferson County	9,740	6,937	5,851
Leake County			
VTD: Conway	961	684	434
VTD: East Carthage	1,645	1,270	178
VTD: North Carthage	2,035	1,396	324
VTD: Ofahoma	660	463	372
VTD: Singleton	1,495	1,104	243
VTD: South Carthage	1,380	1,174	590
VTD: Thomastown	860	642	323
VTD: West Carthage	1,506	974	664
VTD: Wiggins	819	586	408
Leake County Subtotal	**11,361**	**8,293**	**3,536**
Leflore County	37,947	26,667	16,855
Madison County			
VTD: Bible Church	964	509	493
VTD: Camden	1,714	1,119	920
VTD: Cameron	120	96	47
VTD: Canton Pct. 7	707	519	459
VTD: Canton Precinct 1	2,644	1,824	1,187
VTD: Canton Precinct 2	2,511	1,886	795
VTD: Canton Precinct 3	603	413	260
VTD: Canton Precinct 4	3,332	2,263	1,820
VTD: Canton Precinct 5	1,732	1,082	1,070
VTD: Couparle	49	41	33

VTD: Gluckstadt	3,432	2,519	336
VTD: Liberty	2,118	1,426	1,262
VTD: Luther Branson School	1,207	800	655
VTD: Mad. Co. Bap. Fam. Lf .Ct.	2,013	1,188	1,185
VTD: Magnolia Heights	1,916	1,308	1,006
VTD: New Industrial Park	577	378	315
VTD: Sharon	855	553	455
VTD: Tougaloo	605	584	581
VTD: Virlilia	532	369	173
Madison County Subtotal	**27,631**	**18,877**	**13,052**
Montgomery County	12,189	8,925	3,611
Quitman County	10,117	6,880	4,375
Sharkey County	6,580	4,409	2,833
Sunflower County	34,369	24,775	16,387
Tallahatchie County	14,903	10,427	5,666
Tunica County	9,227	6,324	4,062
Warren County	49,644	35,476	14,147
Washington County	62,977	43,144	25,780
Yazoo County	28,149	20,136	9,854
District 2 Subtotal	**711,164**	**501,887**	**297,121**
District 3			
Adams County	34,340	25,149	12,301
Amite County	13,599	10,068	3,967
Covington County	19,407	13,813	4,347
Franklin County	8,448	6,142	1,979
Hinds County			
VTD: 14	1,672	1,476	201

VTD: 17	853	694	40
VTD: 32	1,362	1,038	61
VTD: 33	1,252	934	16
VTD: 34	2,184	1,700	10
VTD: 35	2,401	1,773	160
VTD: 36	1,739	1,383	436
VTD: 37	1,636	1,306	420
VTD: 44	3,002	2,290	463
VTD: 45	2,789	2,281	76
VTD: 46	2,367	1,875	262
VTD: 78	4,337	3,674	433
VTD: 79	2,990	2,289	867
VTD: 8	1,412	1,211	143
VTD: 9	1,836	1,585	74
Hinds County Subtotal	**31,832**	**25,509**	**3,662**
Jasper County			
VTD: Bay Springs Beat 3	1,721	1,287	524
VTD: Bay Springs Beat 4	2,170	1,513	865
VTD: Garlandsville	105	81	43
VTD: Holders Church	1,366	1,003	546
VTD: Louin	1,234	862	424
VTD: Montrose	616	451	235
Jasper County Subtotal	**7,212**	**5,197**	**2,637**
Jefferson Davis County	13,962	9,998	5,269
Jones County			
VTD: Bruce	530	428	14
VTD: Centerville	504	375	2
VTD: Hebron	1,201	838	541
Jones County Subtotal	**2,235**	**1,641**	**557**

Kemper County	10,453	7,795	4,231
Lauderdale County	78,161	57,370	19,661
Lawrence County	13,258	9,635	2,859
Leake County			
VTD: Ebenezer	956	687	374
VTD: Edinburg	946	714	4
VTD: Freeny	1,368	958	86
VTD: Good Hope	1,044	776	197
VTD: Lena	861	625	325
VTD: Madden	996	741	87
VTD: Renfroe	608	465	60
VTD: Salem	758	569	65
VTD: Sunrise	669	507	22
VTD: Walnut Grove	1,373	973	540
Leake County Subtotal	**9,579**	**7,015**	**1,760**
Lincoln County	33,166	24,324	6,716
Madison County			
VTD: Bear Creek	2,461	1,749	500
VTD: Flora	1,756	1,301	349
VTD: Highland Colony Bap. Ch.	2,137	1,440	294
VTD: Lorman-Cavalier	1,531	1,148	409
VTD: Madison 1	1,651	1,149	19
VTD: Madison 2	3,585	2,582	63
VTD: Madison 3	3,853	2,658	173
VTD: Madisonville	427	323	81
VTD: Main Habor	1,953	1,574	51
VTD: Ratliff Ferry	1,075	795	410
VTD: Ridgeland 1	3,565	2,836	503
VTD: Ridgeland 3	3,990	3,138	1,027
VTD: Ridgeland 4	2,571	2,221	468
VTD: Ridgeland First Meth. Ch.	2,941	1,964	529
VTD: Ridegland Tennis Center	5,472	4,050	307
VTD: Smith School	499	380	39
VTD: Trace Harbor	1,820	1,277	34
VTD: Victory Baptist Church	3,788	2,449	69
VTD: Whispering Lake	1,968	1,383	128
Madison County Subtotal	**47,043**	**34,417**	**5,453**
Marion County			
VTD: Broom	831	590	202
VTD: Carley	1,389	1,016	128
VTD: Cedar Grove	820	573	167
VTD: Darbun	447	347	47
VTD: Foxworth	1,691	1,187	347
VTD: Goss	837	614	101
VTD: Kokomo	985	718	191
VTD: Morgantown	777	581	8
VTD: Pittman	919	669	7
VTD: Stovall	907	607	253
VTD: White Bluff	139	96	2
Marion County Subtotal	**9,742**	**6,998**	**1,453**
Neshoba County	28,684	20,583	3,609
Newton County	21,838	16,126	4,495
Noxubee County	12,548	8,697	5,751
Oktibbeha County	42,902	33,877	11,179
Pike County	38,940	28,154	12,331
Rankin County	115,327	85,452	13,901
Scott County	28,423	20,293	7,220
Simpson County	27,639	19,920	6,110

Smith County	16,182	11,731	2,354
Walthall County	15,156	10,853	4,242
Webster County			
VTD: Maben	750	528	138
Webster County Subtotal	**750**	**528**	**138**
Wilkinson County	10,312	7,648	4,992
Winston County			
VTD: American Legion	1,989	1,338	1,061
VTD: Bethany	242	186	21
VTD: Betheden-Loakfoma	363	278	87
VTD: Bond	915	673	164
VTD: Calvary	339	258	80
VTD: County Agent	1,792	1,188	941
VTD: Crystal Ridge	385	287	65
VTD: Dean Park	404	269	239
VTD: E.M.E.P.A.	1,357	1,007	266
VTD: Elementary School	834	610	285
VTD: Ellison Ridge	436	343	73
VTD: Fairground	2,044	1,583	579
VTD: Ford School	429	334	46
VTD: Hinze	69	52	1
VTD: Liberty	594	413	238
VTD: Lobutcha	292	206	96
VTD: Louisville Electric	224	158	40
VTD: Louisville High School	429	305	68
VTD: Lovorn Tractor	297	244	16
VTD: Mars Hill	343	262	43
VTD: Nanih Waiya	1,378	1,005	169
VTD: Nanih Waiya-Handle	573	410	86
VTD: New Hope	271	222	13
VTD: Noxapater	1,618	1,200	344
VTD: Old National Guard			

Armory	904	750	59
VTD: Sinai	369	276	147
VTD: Vowell	263	201	99
VTD: Zion Ridge	873	602	494
Winston County Subtotal	**20,026**	**14,660**	**5,820**
District 3 Subtotal	**711,164**	**523,593**	**158,994**
District 4			
Clarke County	17,955	13,147	4,185
Forrest County	72,604	54,801	16,378
George County	19,144	13,560	1,076
Greene County	13,299	10,088	2,768
Hancock County	42,967	32,163	1,975
Harrison County	189,601	140,213	26,665
Jackson County	131,420	95,072	17,952
Jasper County			
VTD: Antioch	614	456	48
VTD: Claiborne	617	449	213
VTD: Cooks Mill	770	527	468
VTD: Fellowship	234	181	54
VTD: Heidelberg	2,265	1,573	1,158
VTD: Midway	525	375	213
VTD: Mossville	1,452	1,058	235
VTD: Palestine	189	141	91
VTD: Philadelphia	578	425	297
VTD: Ras	147	113	61
VTD: Rose Hill	941	708	275
VTD: Stringer	1,660	1,266	74
VTD: Vossburg	945	608	543
Jasper County Subtotal	**10,937**	**7,880**	**3,730**

Jones County			
VTD: Anthonys Florist	927	582	414
VTD: Antioch (28067310)	596	472	0
VTD: Blackwell	135	93	3
VTD: Calhoun	3,275	2,525	43
VTD: Cameron Center	709	515	131
VTD: Cooks Ave. Comm Ctr.	878	626	608
VTD: County Barn	1,861	1,498	317
VTD: Currie	270	185	169
VTD: Ellisville Court House	1,507	1,216	254
VTD: Erata	642	485	233
VTD: Gitano	447	335	84
VTD: Glade School	1,932	1,480	24
VTD: Johnson	1,001	706	4
VTD: Lamar School	1,768	1,292	356
VTD: Landrum Comm. Ctr.	740	570	1
VTD: Laurel Courthouse	1,771	1,291	352
VTD: Maple Street YWCA	472	329	302
VTD: Mason School	2,078	1,668	39
VTD: Matthews	867	627	61
VTD: Moselle	1,820	1,351	185
VTD: Myrick	1,832	1,359	8
VTD: National Guard Armory	2,353	1,606	1,151
VTD: Nora Davis School	1,790	1,293	1,145
VTD: Oak Park School	1,805	1,109	1,078
VTD: Old Health Dept.	499	307	268
VTD: Ovett	1,301	954	12
VTD: Pendorf	646	493	14
VTD: Pinegrove	1,510	1,168	84
VTD: Pleasant Ridge	892	694	5
VTD: Powers Comm. Ctr.	1,595	1,158	233

VTD: Rainey	1,567	1,174	1
VTD: Roosevelt	601	427	323
VTD: Rustin	1,144	853	0
VTD: Sandersville Civic Center	1,390	1,044	92
VTD: Sandhill	924	716	1
VTD: Shady Grove	4,332	3,150	572
VTD: Sharon	3,508	2,604	375
VTD: Shelton	1,130	854	180
VTD: Soso	1,600	1,175	502
VTD: South Jones	1,357	1,047	191
VTD: Stainton	1,882	1,445	458
VTD: Tuckers	1,683	1,262	33
VTD: Twenty-Sixth St. Fire Stn	803	655	76
VTD: Union	1,216	902	28
VTD: West Jones	1,667	1,262	240
Jones County Subtotal	**62,723**	**46,557**	**10,650**
Lamar County	39,070	28,134	3,241
Marion County			
VTD: Balls Mill	1,071	806	169
VTD: City Hall Beat 3	828	598	205
VTD: Couthouse Beat 4	1,324	1,018	123
VTD: East Columbia	2,107	1,390	988
VTD: Hub	919	662	324
VTD: Jefferson Middle School	688	437	420
VTD: Morris	1,545	1,129	308
VTD: National Guard Beat 1	2,666	1,866	116
VTD: Pinebur	956	691	166
VTD: Popetown Beat 2	1,914	1,434	301

VTD: Sandy Hook	535	408	108
VTD: South Columbia	860	713	569
VTD: Union (28091103)	440	329	12
Marion County Subtotal	15,853	11,481	3,809
Pearl River County	48,621	35,515	3,927
Perry County	12,138	8,655	1,692
Stone County	13,622	9,966	1,777
Wayne County	21,216	15,014	5,112
District 4 Subtotal	**711,170**	**522,246**	**104,937**
State Totals	**2,844,658**	**2,069,471**	**685,259**

ANALYSIS OF FACTORS CONSIDERED

Population Equality

The United States Constitution requires a good-faith effort to ensure, as nearly as is practicable, that a State's congressional districts contain equal population. This court has made every effort to achieve absolute population equality without splitting voting precincts. The population deviation range is from +5 people in District 4 to -5 people in District 1. The effort to achieve population equality among the districts explains in significant part why some counties must be split.

Majority-Minority District

The Voting Rights Act requires that one congressional district be maintained in the State with an appropriate majority of black voting age residents. This district is represented on the map as District 2. Based on the figures from the 2000 Census, District 2 under the currently existing five-district plan has a black voting age population of 61%. Any significant variation in that percentage – up or down – constitutes retrogression of the voting rights of black residents of District 2 under § 5 of the Voting Rights Act. Under this court's redistricting plan, the black voting age population in District 2 is 59.20%. The effort to maintain the appropriate majority of black voting age citizens in District 2 further explains why some counties must be split.

Compactness

The court has attempted to achieve, as nearly as possible, four compact districts. The ability to create compact districts is limited by the distribution of population. Sparsely populated

districts necessarily will be less compact than heavily populated districts as a result of the population equality principle. Furthermore, a more compact plan cannot be drawn for two reasons: First, it would not be possible to prevent retrogression in District 2; and, secondly, it would be a barrier to including as much as possible of the currently existing districts 3 and 4 in the new District 3.

County and Municipal Boundaries

The plan splits eight counties: Hinds, Jasper, Jones, Leake, Madison, Marion, Webster, and Winston. We note that eleven counties are split under the currently existing five-district congressional plan adopted by the Mississippi Legislature in 1992. We attach a copy of that currently existing plan for reference.

In this court's plan today, Jasper and Marion Counties are split as part of the effort to maintain as much of currently existing district 4 in new District 3 as is feasible, subject to the constraints of population equality. Furthermore, Jasper County is split in a particular way to avoid splitting the town of Bay Springs. Hinds, Leake, and Madison Counties are split as part of the effort to prevent retrogression in District 2, as well as to help achieve population equality. Jones County is split so as not to remove the incumbent from his district and also to help achieve population equality. Webster County is split to avoid dividing the town of Maben, which lies partially in Oktibbeha County and partially in Webster County, among two districts. Winston County is split to help achieve population equality. The only municipality that is split is the City of Jackson. Mayor Johnson testified in Chancery Court that he preferred that the City be represented by two congressmen. In sum, the county splits are necessitated by: the population equality

requirement; preservation of the majority-minority district at an appropriate percentage; preservation of the cores of currently existing districts 3 and 4; and avoiding having incumbents districted out of their residences.

Historical and Regional Interests

The plan preserves as much as possible, given the constraints of population equality and § 5 of the Voting Rights Act, the cores of the Mississippi River/Delta region, East Central Mississippi, Southwest Mississippi, North Mississippi, and the Gulf Coast region.

Universities and Military Bases

The plan is drawn to assure that the 4 major research universities are also in separate districts. The military bases located in Lowndes, Lauderdale, and Harrison Counties are also in separate districts under this court's plan.

Growth Areas

The plan is drawn to provide that each district has at least one major growth area. District 1 contains DeSoto and Lee Counties, as under the currently existing five-district plan. District 2 contains the Nissan Plant/Gluckstadt area of Madison County, as it does under the currently existing five-district plan, and the Byram and Clinton areas of Hinds County, which are in district 4 under the currently existing five-district plan. District 3 contains southern Madison County and Rankin County. District 4 contains the Gulf Coast area.

Combination of Currently Existing Districts 3 and 4

In drawing District 3, consideration was given to including as much of the currently existing districts 3 and 4 in the new combined District 3 as possible. The new District 3 contains all or part of 14 counties from each of the currently existing districts 3 and 4, respectively.

The new District 3 includes the portion of Jones County which contains the incumbent's residence. It includes all or part of 14 of the 19 counties that comprise currently existing district 3: Jasper, Jones, Kemper, Lauderdale, Leake, Madison, Neshoba, Newton, Noxubee, Oktibbeha, Rankin, Scott, Smith, and Winston; however, it is necessary to eliminate: the portions of Attala County and Wayne County that are in currently existing district 3 for concerns of retrogression and population equality, respectively; and all of Clarke, Clay, and Lowndes Counties, primarily because of population equality.

The new District 3 includes all of Jefferson Davis County, which contains the residence of the incumbent for currently existing district 4. It includes all or part of 14 of the 15 counties that comprise currently existing district 4: Adams, Amite, Covington, Franklin, Hinds, Jefferson Davis, Jones, Lawrence, Lincoln, Marion, Pike, Simpson, Walthall, and Wilkinson; however, it is necessary to eliminate Copiah County for reasons of population equality with District 2 and to prevent retrogression of voting rights of black residents of District 2.

Protection of Incumbent Residences

No incumbent would be required to move in order to run in the district in which he resides.

Distance of Travel Within District

As is expected to occur when the number of districts is reduced from five to four, the distances of travel within the districts are increased. The distance of travel within District 1 is approximately the same size as under the plan submitted by the plaintiffs, and is substantially less than it is under the plan submitted by the intervenors. The new District 2 is slightly larger than currently existing district 2, but this is unavoidable in the light of the population deficit in currently existing district 2, which grew more slowly than any other district in the State. The distance of travel within new District 3 is dictated by the effort to combine currently existing districts 3 and 4, as well as by the effort to keep the four major research universities in separate districts. The distance of travel in new District 4 is slightly greater than it is in currently existing district 5. This is necessitated by the effort to include in District 3 as much of currently existing district 4 as is feasible. The distance of travel within new District 4 is substantially less than that within district 4 in the plan submitted by the plaintiffs.

SUMMARY

In sum, the court has attempted to apply all appropriate neutral factors that are recognized by the United States Supreme Court and federal redistricting courts. As noted, these factors include, first, the constitutional demand for population equality among the districts, and secondly, the Voting Rights Act requirement that one equally populated district be drawn to include a majority of black residents of voting age. While respecting county, city and precinct lines and compactness of each district, the court sought to give appropriate value to the following factors: that District 3 should include as much as possible of the currently existing districts 3 and 4; that growth

areas, research universities and military bases should be placed in separate districts if otherwise practicable; that historical and regional interests should be respected; that no incumbent should be required to move; and that travel distances within the districts be as minimal as possible, consistent with the other requirements. When all feasible adjustments were made for these factors, further adjustments were necessary to satisfy one person-one vote requirements, and retrogression concerns.

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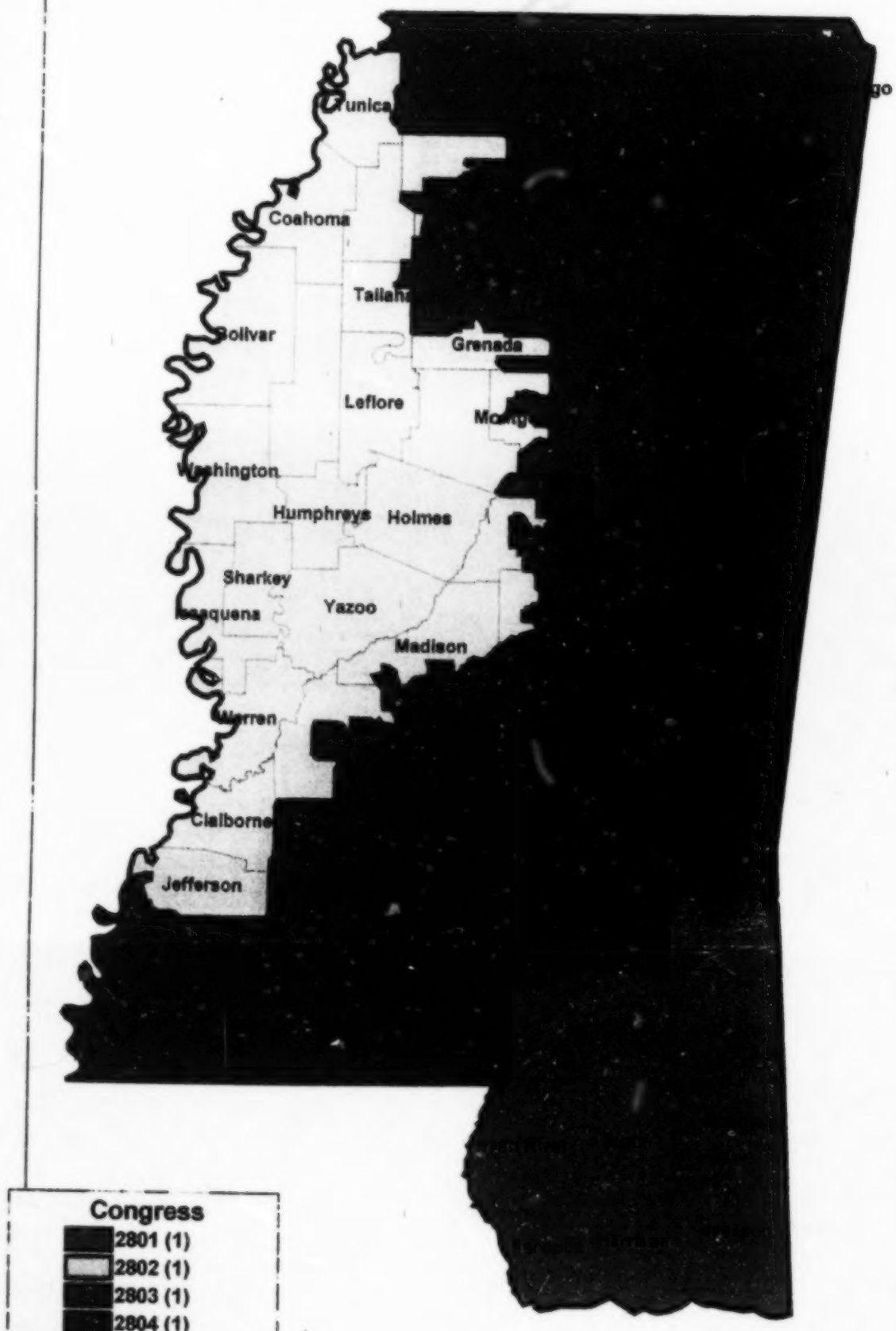
Current Congressional Districts



APPENDIX E

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

JOHN ROBERT SMITH,
SHIRLEY HALL, AND
GENE WALKER — PLAINTIFFS

V. — CIVIL ACTION NO. 3:01-CV-855WS

ERIC CLARK, Secretary of State
of Mississippi; MIKE MOORE,
Attorney General for the State
of Mississippi; RONNIE MUSGROVE,
Governor of Mississippi; MISSISSIPPI
REPUBLICAN EXECUTIVE COMMITTEE; AND
MISSISSIPPI DEMOCRATIC EXECUTIVE
COMMITTEE — DEFENDANTS

AND

BEATRICE BRANCH; RIMS BARBER;
L. C. DORSEY; DAVID RULE; JAMES
WOODARD; JOSEPH P. HUDSON; and
ROBERT NORVEL — INTERVENORS

(Filed Jan. 15, 2002)

ORDER

This matter is before us on the plaintiffs' motion for preliminary injunction as amended. In a previous order, we

deferred ruling on that motion until January 7, 2002, in order to give the State authorities an opportunity to timely carry out their duty to reapportion Mississippi's congressional districts. We recognize that the primary responsibility for reapportionment lies with the State and that if the State can timely reapportion itself in a constitutionally acceptable manner, federal courts have no duties to draw congressional districts. Because, for reasons that follow, it now appears uncertain whether the State authorities can have a redistricting plan in place by March 1, 2002 (the deadline to qualify for candidacy for the United States House of Representatives in Mississippi, *see* Miss. Code Ann. § 23-15-299), we conclude that it is necessary to assert our jurisdiction and to take under advisement the plaintiffs' motion for preliminary injunction, and, in response to plaintiffs' motion, we will begin to draft a plan for reapportioning Mississippi's congressional districts in order to assure that the congressional election schedule as provided under the laws of the State of Mississippi is timely implemented under a plan that satisfies both the requirements of the Constitution and § 5 of the Voting Rights Act. We begin by setting out the background facts.

I

As a result of the 2000 Decennial Census, the number of congressional representatives allotted to the State of Mississippi has been reduced from five to four. The attempts of the Mississippi Legislature to reapportion the State's congressional districts – a process that began some several months ago – have been unsuccessful.

In October 2001, the Intervenors in this case filed an action in the Chancery Court for the First Judicial District of Hinds County, Mississippi, against Mississippi's Secretary of State,

Attorney General, and Governor. The complaint alleged that the Legislative Standing Joint Congressional Redistricting Committee failed timely to submit Mississippi's new redistricting plan pursuant to Miss. Code Ann. § 5-3-129, and sought an injunction adopting and directing the implementation of a congressional redistricting plan.

On November 1, the plaintiffs, three Mississippi registered voters, filed this action in the United States District Court for the Southern District of Mississippi against the Mississippi Secretary of State, Attorney General, and Governor, as well as the Mississippi Republican Executive Committee and the Mississippi Democratic Executive Committee. The complaint alleged that Mississippi's districting plan dividing the State into five congressional districts cannot be enforced under federal law, and that any plan subsequently adopted by State authorities cannot be enforced until it has been precleared under § 5 of the Voting Rights Act, 42 U.S.C. § 1973c. The plaintiffs sought injunctive relief to ensure that the State of Mississippi has a constitutional congressional redistricting plan in place in time to comply with the March 1, 2002 candidate qualification deadline. Specifically, the plaintiffs asked us to enjoin enforcement of the current congressional districting plan, Miss. Code Ann. § 25-15-1037, and to order that, in the 2002 congressional election, Mississippi's congressional representatives be chosen by the electors of the State at-large or, alternatively, that we adopt a new congressional redistricting plan.

This three-judge court was appointed by the Chief Judge of the United States Court of Appeals for the Fifth Circuit, The Honorable Carolyn Dineen King, and was convened pursuant to 28 U.S.C. § 2284, which provides that a district court of three judges "shall be convened when . . . an action is filed

challenging the constitutionality of the apportionment of congressional districts."

In an order dated November 19, 2001, the Chancery Court urged the Legislature and the Governor to renew their efforts to enact and implement a congressional redistricting plan as soon as possible. On December 3, the Chancery Court entered a scheduling order allowing the parties until the end of December to complete discovery and scheduling trial on January 14, 2002.

On November 30, 2001, we conducted a hearing on the plaintiffs' motion for preliminary injunction, the State defendants' motion to dismiss, and two motions for intervention. We entered an order on December 5, in which we granted the motion for leave to intervene filed by the plaintiffs in the Chancery Court action. Recognizing that "the Constitution leaves with the States primary responsibility for apportionment of their federal congressional . . . districts", *Emison v. Growe*, 507 U.S. 25, 34 (1993), we deferred ruling on the plaintiffs' motion for preliminary injunction so that State authorities might have further opportunity to timely carry out their duty to reapportion Mississippi's congressional districts. We stated, however, that if it was not clear by January 7, 2002, that the State authorities can have a redistricting plan in place by March 1, we would assert our jurisdiction and proceed expeditiously to rule on plaintiffs' motion for preliminary injunction and, if necessary, draft and implement a plan reapportioning the State's four congressional districts.

On December 7, the Chancery Court entered an amended scheduling order, ordering that discovery be completed by December 13, and moving the trial date up to December 14.

On December 13, the Mississippi Supreme Court denied

petitions for a writ of prohibition and a writ of mandamus filed by the State defendants and other petitioners challenging the Chancery Court's jurisdiction. In a two-page order, the Mississippi Supreme Court held that the Chancery Court had jurisdiction to conduct congressional redistricting and stated that "[a]ny congressional redistricting plan adopted by the chancery court . . . will remain in effect, subject to any congressional redistricting plan which may be timely adopted by the Legislature." The Court cited no authority and gave no explanation for its ruling. *In re Mauldin*, No. 2001-M-01891 (Miss. Dec. 13, 2001).

Trial commenced in the Chancery Court on December 14, and continued through December 18, with closing arguments on December 19. Eleven redistricting plans were submitted into evidence, and approximately twenty witnesses testified. The State defendants neither presented evidence, proposed any redistricting plans, nor participated at the trail. In a Opinion and Order issued on December 21, the Chancery Court adopted a plan as submitted by the plaintiffs (intervenors in this action). We are advised by the parties that the Chancery Court's judgment will be appealed to the Mississippi Supreme Court.

On December 17, the plaintiffs in this action moved for leave to amend their complaint and motion for preliminary injunction. The plaintiffs contend that the Chancery Court's entertaining of a congressional redistricting suit and the Mississippi Supreme Court's December 13 Order holding that the Chancery Court had jurisdiction constitute changes in practices and procedures with respect to voting, covered by the preclearance requirements of § 5 of the Voting Rights Act. The plaintiffs have asked us to enjoin the defendants from conducting any election using the current districting plan (which all parties agree is unenforceable), and to enjoin all actions to be taken pursuant to the Mississippi Supreme Court's

December 13 order and the Chancery Court's judgement until such time as both have been approved by federal authorities pursuant to § 5 of the Voting Rights Act. In addition, the plaintiffs asserted that, irrespective of whether the plan adopted by the Chancery Court is precleared by federal authorities, the Chancery Court's action violates Article I, § 4 of the United States Constitution, which provides that "The Times, Places and Manner of Holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof . . . ."[1] The plaintiffs contend that the Chancery Court's imposition of a redistricting plan usurps authority delegated to the Mississippi Legislature under Art. I, § 4. Finally, although they were not parties in the Chancery Court action, the plaintiffs assert that the Chancery Court violated the due process rights of parties to that action. The plaintiffs have requested that we order the election of congressional representatives by the electors of the State at-large, pursuant to Miss. Code Ann. § 23-15-1039 and 2 U.S.C. § 2a(c) (5) or, alternatively, that we devise a new, constitutional districting plan.

On December 26, 2001, the Attorney General of Mississippi submitted the Chancery Court judgment and the procedural orders of the Chancery Court and the Mississippi Supreme Court to the Attorney General of the United States for preclearance, and requested expedited consideration and

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[1] The remaining part of this sentence reads as follows: "but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators." There is a specific federal statute giving federal courts jurisdiction over reapportionment matters. See 28 U.S.C. § 2284(a) ("A district court of three judges shall be convened . . . when an action is filed challenging the constitutionality of the apportionment of congressional districts or the apportionment of any statewide legislative body.")

preclearance by January 31, 2002.

We conducted a hearing on the Plaintiffs' Motion for Leave to Amend and for Preliminary Injunction on December 28, 2001. In the light of the State defendants' acknowledgment that the current districting plan (dividing the State into five congressional districts) is unenforceable, and their further acknowledgment that the plan adopted by the Chancery Court cannot be implemented unless and until it is precleared by federal authorities, we directed the parties to file briefs on whether there remains a justiciable case or controversy before us.

For the reasons that follow, we conclude that this case is not moot, and that it is necessary to exercise our jurisdiction in order to ensure that an enforceable congressional redistricting plan is in place prior to the March 1, 2002 deadline for candidates to qualify for the 2002 congressional election.[2]

II

Historically, as provided by state and federal law, the Mississippi Legislature – not the state courts – has enacted congressional redistricting plans. *See* Miss. Code Ann. §§ 5-3-121, 5-3-123, 5-3-127, 5-3-129; U.S. Const. Art. I, § 4. Indeed, in 1932, the Mississippi Supreme Court held that state courts did not have jurisdiction over actions challenging congressional redistricting plans. *Brumfield v. Brock*, 169 Miss. 784, 142 So. 2d 745 (1932); *Wood v. Gillespie*, 169 Miss.

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[2] All of the parties seem to concede that there is a live controversy and that this court has jurisdiction to decide the issues that are presented, including implementing a redistricting plan, although whether, when and how we should exercise that jurisdiction is very much in dispute.

790, 142 So. 747 (1932).

The circumstances that gave rise to the present controversy – the Legislature's failure to reapportion the State's congressional districts – are addressed in Miss. Code Ann. § 25-15-1039, which was precleared by the United States Attorney General in 1986. It provides:

Should an election of representatives in congress occur after the number of representatives to which the state is entitled shall be changed, in consequence of a new apportionment being made by congress, and before districts shall have been changed to conform to the new apportionment, the representatives shall be chosen as follows: . . . if the number of representatives shall be diminished, then the whole number shall be chosen by the electors of the state at large.

Thus, the Mississippi Supreme Court's December 13 Order holding that the Chancery Court has jurisdiction to reapportion Mississippi's congressional districts as a matter of state law clearly appears to be a change in Mississippi's election procedures that must be precleared by federal authorities pursuant to § 5 of the Voting Rights Act. *See Allen v. State Bd. of Elections*, 393 U.S. 544, 566 (1969) (in § 5, "Congress intended to reach any state enactment which altered the election law of a covered State in even a minor way"); *In re McMillan*, 642 So. 2d 1336, 1339 (Miss. 1994) (chancery court's enjoining of judicial primary elections "constitutes a change in voting standards, practices and procedures . . . subject to § 5 preclearance or approval . . . [that,] even if within the jurisdiction of the chancery court to grant, cannot be enforced without preclearance"). As we have noted, the State defendants at least implicitly acknowledge that this is a change in state law which must be precleared, because they have included the

Mississippi Supreme Court's Order in their submission to the Attorney General of the United States. Furthermore, at the December 28 hearing, the State defendants represented that they did not disagree with the Plaintiffs' interpretation of the Department of Justice regulations.

In addition, as acknowledged by the State defendants and the intervenors, the Chancery Court's judgment adopting a congressional redistricting plan is a change from the previous districting plan set forth in Miss. Code Ann. § 23-15-1037, and from the at-large plan set forth in Miss. Code Ann. § 23-15-1039 for circumstances such as the present ones. That change likewise cannot be enforced unless and until it is precleared under § 5. *See Connor v. Waller*, 421 U.S. 656 (1975). The State defendants have represented to us that they have no intention of taking any steps to administer, implement, or enforce the Chancery Court's districting plan until § 5 approval is obtained.

Although the State authorities have requested that their preclearance submission be given expedited consideration by the Attorney General of the United States, we have serious doubts whether the Mississippi Supreme Court's Order and the plan adopted by the Chancery Court pursuant to that order will be precleared prior to the March 1 candidate qualification deadline. In the first place, if the Chancery Court's judgment is appealed to the Mississippi Supreme Court, it is not at all clear that the Attorney General of the United States will act on the State's preclearance submission.[3] The regulations of the Department of Justice provide that, "with respect to a change

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[3] The Mississippi Republican Executive Committee has advised this court that it intends to appeal the Chancery Court's judgment to the Mississippi Supreme Court.

for which approval by . . . a State . . . court . . . is required, the Attorney General may make a determination considering the change prior to such approval if the change is not subject to alteration in the final approving action." 28 C.F.R. § 51.22(b).

We have no way of knowing whether the Mississippi Supreme Court will hear any appeal and, if it does, when it will render a decision.[4] Even if the Attorney General of the United States decides to consider the State's submission despite the pendency of an appeal of the Chancery Court's judgment, it is possible that either the Mississippi Supreme Court's Order or the plan adopted by the Chancery Court could be changed during the pendency of the preclearance proceeding. In determining that the Chancery Court had jurisdiction to conduct congressional redistricting, the Mississippi Supreme Court was ruling on petitions for a writ of prohibition and a writ of mandamus, and not deciding the merits of the case. Assuming it decides to hear an appeal of the Chancery Court's judgment, the Court may reconsider the issue of the Chancery Court's jurisdiction, or it may decide to place limits on that jurisdiction. It is also possible that the Court may make changes in the plan adopted by the Chancery Court. In either event, any such changes would have to be precleared by federal authorities, making it even more unlikely that a precleared plan will be in place prior to March 1.

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[4] It is uncertain whether the Mississippi Supreme Court will hear any appeal, inasmuch as the language of its December 13 order might be interpreted to mean that the Court has decided that the State's congressional districts should be reapportioned by a single Chancery Judge with no review by the State Supreme Court. The Mississippi Supreme Court stated: "Any congressional redistricting plan adopted by the chancery court in cause no. G-2001-1777 W/4 will remain in effect, subject to any congressional redistricting plan which may be timely adopted by the Legislature."

Even if we set aside our concerns about the lack of finality, the wide-ranging implications of the Mississippi Supreme Court's Order – giving a single chancery judge the power to reapportion the entire State's congressional districts, together with the possible absence of any appeal to a higher court – raise uncertainties whether the Order will be precleared. That broad grant of power presents quite serious concerns, including the potential for violations of § 2 of the Voting Rights Act. Furthermore, it is not at all clear that this change is not retrogressive with respect to minority voting rights, in the sense that redistricting decisions will depend on the individual views of an individual judge, elected by a small percentage of the State's voters. Furthermore, reapportionment questions arise in many contexts other than congressional redistricting – including redistricting of the Mississippi Legislature – and it is uncertain how far the reach of the chancery courts may now extend in all reapportionment matters. Consequently, it appears to us that, at the very least, the Attorney General of the United States will consider those implications very carefully, and might perhaps request more information from State authorities to clarify what is embodied in the change and the consequences thereof.

We very much appreciate that the United States Supreme Court has stated that "state courts have a significant role in redistricting." *Emison*, 507 U.S. at 33 (citing *Scott v. Germano*, 381 U.S. 407, 409 (1965)). These cases are highly relevant to the matters before us today. There are, however, distinctions to be made: *Germano*, the precedent cited for *Emison*, dealt exclusively with reapportionment of state legislative districts, not redistricting for the United States Congress, and neither of the states involved in *Emison* and *Germano* (Minnesota and Illinois) was subject to the preclearance requirements of § 5 of the Voting Rights Act. We

also note that in *Emison* the parties in the state court action had no control over the selection of the court in which their case was heard. Instead, the Minnesota Supreme Court appointed a special panel consisting of one appellate judge and two district judges to hear the case. 507 U.S. at 28. Although *Emison* (which dealt with both legislative and congressional redistricting and the reasoning is somewhat fused between the two) supports a conclusion that state courts have a role in congressional redistricting, as well as state legislative redistricting, the Court did not have before it, and thus did not consider, the effect of Article I, § 4 of the United States Constitution on congressional redistricting, which clause seems to designate congressional election matters to the legislature of a given state. Consequently, we have some uncertainty as to how *Emison* and *Germano* will be applied by the United States Attorney General in the context of a § 5 preclearance proceeding in a congressional redistricting case.

There is yet another reason why the Chancery Court 's adoption of a redistricting plan fails to assure that an approved plan will be in place by March 1: If the Mississippi Legislature chooses to act, the Mississippi Supreme Court has said that the Legislature's action will nullify the plan adopted by the Chancery Court. Should the Legislature act, any plan adopted by it would have to be precleared by federal authorities, and there are uncertainties as to whether such preclearance could be obtained before March 1 – although we acknowledge that there are fewer potential preclearance problems in a legislative plan than in the present court-ordered plan.

Finally, even if the Attorney General of the United States approves the changes submitted for preclearance, the plaintiffs in this action have challenged the authority of the state court to conduct congressional redistricting under Article I, § 4 of the

United States Constitution ("The Times, Places and Manner of Holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof . . . ."). The plaintiffs contend that Art. I, § 4 vests in state legislatures the power to conduct congressional redistricting, leaving no room for state courts to impose a redistricting plan as a matter of state, not federal, law. That question appears to remain for our decision, irrespective of whether the changes are precleared.

The State defendants and the Intervenors have suggested that there is no need for this court to act because no one intends to implement and enforce either the current districting plan (dividing the State into five congressional districts) or the plan adopted by the Chancery Court, absent preclearance. The State defendants and the Intervenors have suggested that the March 1 candidate qualification deadline is not set in stone and that it is not necessary that district lines exist on March 1. We are fully convinced, however, that such an election change would create confusion, misapprehension and burdens for the voters, for the political parties, and for the candidates. Many voters want to participate in the election process to a greater extent than mere voting. They want to personally know the candidates, to select their choice, to give money to their selection and to organize the people in their precincts or counties in the campaign for their choice. Given that all previous districts are being jumbled by the loss of one congressional representative, sorting out these new problems will take all the pre-primary time that the present statute allows. If we begin to delay the establishment of election districts and advance qualifying dates, such voters who want to become fully involved in the process will not timely know in which district they are going to be, and thus will not timely know where and with whom to become involved. The same situation will exist for the candidates. Postponing the election schedule means that

the candidates and political parties would encounter campaign and election burdens, that is, significant time constraints on getting acquainted with new voters, establishing organizations in new election districts and the multiple new precincts and counties therein, raising campaign funds within the new districts, developing strategies for particular geographic areas, etc. Indeed, postponing the election schedule is inconsistent with the position taken in the Mississippi Attorney General's preclearance submission, which requests expedited consideration in order to allow candidates and voters fully to understand the newly enacted district lines prior to the March 1 qualifying deadline. Furthermore, changing the March 1 date is inconsistent with the position taken by the Intervenors in their amended complaint filed in Chancery Court, in which they assert that, if a plan is not adopted in time for it to be implemented in advance of the March 1 deadline, "the interests of the plaintiffs and all Mississippi voters in enforcement of Mississippi's election laws will be compromised, and their rights under Mississippi law to participate in a congressional election process conducted in a timely manner will be violated." It is also significant to us that changing the deadline would also contravene the Mississippi Supreme Court's recognition of the importance of such deadlines under state election law. *See Adams County Election Comm'n v. Sanders*, 586 So. 2d 829, 832 (Miss. 1991) (an election schedule that violates the state election code is adverse to the public interest).[5]

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[5] The Intervenors ask us to wait until February 24 (the end of the sixty-day period within which the Attorney General of the United States may object to the State's submission) before exercising our jurisdiction. They seem to concede that, after that date, a plan from this court would be appropriate. We, of course, do not decide what course of action we will take if the Chancery Court's plan is approved on or before March 1. We are simply unwilling to wait until a point in time that would not provide ample

In sum, we agree with the State, the Intervenors, and the State Supreme Court that changing the dates of the election schedule would be deleterious to the rights of the voters, the candidates and the political parties, and accordingly we are determined to avoid such a change of dates. Therefore, because it now appears to be uncertain that the State authorities will have a redistricting plan in place by March 1, we will assert our jurisdiction. Accordingly, we will begin the process of drafting and implementing a plan for reapportioning Mississippi's congressional districts.

III

In concluding, we want to make this point absolutely clear: "The task of redistricting is best left to state legislatures, [which are] elected by the people and [are] as capable as the courts, if not more so, in balancing the myriad factors and traditions in legitimate districting policies." *Abrams v. Johnson*, 521 U.S. 74, 101 (1997). *See also White v. Weiser*, 412 U.S. 783, 794 (1973) ("reapportionment is primarily a matter for legislative consideration and determination, [and] judicial relief becomes appropriate only when a legislature fails to reapportion according to federal constitutional requisites in a timely fashion after having an adequate opportunity to do so"). Although it may be difficult for the Legislature to adopt a plan at this late date, nothing in this order should be construed as in any way discouraging action by the Mississippi Legislature, to which the United States Constitution and the laws of Mississippi direct the primary responsibility for congressional redistricting. A precleared legislative plan is unequivocally to be preferred over a court-ordered plan, whether federal or state – and this is a

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time for our thorough consideration of the reapportionment issues presented in this case.

view consonant with the views of the Chancery Court and the Mississippi Supreme Court in this case. Without commenting on the ultimate role of the federal courts should the Legislature act, we encourage the Legislature to act. We should note that, if the Legislature should adopt a plan, it is much more likely to be precleared expeditiously than the plan adopted by the Chancery Court. This is true not only because the United States Constitution grants to state legislatures the duty and authority to enact legislation governing congressional elections, but also because such a plan would not have the potential preclearance encumbrances affecting the court-ordered plan, which we have noted earlier. And if the Legislature acts, and acts quickly, the 2002 congressional elections could be conducted on the basis of a plan emanating from the elected representatives of the people of Mississippi and not from this court. In the meantime, this court will begin the process of holding hearings to fashion a congressional reapportionment plan for the State to assure that the election process operates on schedule and without temporal change.

A ruling on the motion for preliminary injunction will come at a later date once all pending matters have been fully vetted. In accordance with this order, a scheduling conference is hereby set for 3:30 p.m. on Wednesday, January 16, 2002.

PLACE

DATE AND TIME

James O. Eastland U.S. Courthouse
Wednesday, January 16, 2002
Fourth Floor Courtroom
3:30 p.m.
245 East Capitol Street

Jackson, MS 39201

SO ORDERED, this 15th day of January, 2002.

/s/ E. Grady Jolly
E. GRADY JOLLY
United States Circuit Judge

/s/ Henry T. Wingate
HENRY T. WINGATE
United States District Judge

/s/ David C. Bramlette, III
DAVID C. BRAMLETTE, III
United States District Judge

APPENDIX F

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

JOHN ROBERT SMITH,
SHIRLEY HALL, AND
GENE WALKER — PLAINTIFFS

V. — CIVIL ACTION NO. 3:01-CV-855WS

ERIC CLARK, Secretary of State
of Mississippi; MIKE MOORE,
Attorney General for the State
of Mississippi; RONNIE MUSGROVE,
Governor of Mississippi; MISSISSIPPI
REPUBLICAN EXECUTIVE COMMITTEE; AND
MISSISSIPPI DEMOCRATIC EXECUTIVE
COMMITTEE — DEFENDANTS

(Filed Dec. 5, 2001)

ORDER

This cause came on for hearing on November 30, 2001, on the Plaintiffs ' Motion for Preliminary Injunction, the State Defendants' Motion to Dismiss, the Motion of Richard Barrett to Intervene, and the Motion to Intervene of Beatrice Branch, et al. Having considered the pleadings, the briefs, and the arguments of counsel, we make the following rulings:

The Motion of Richard Barrett to Intervene is DENIED.

The Motion to Intervene of Beatrice Branch, et al., is GRANTED.

The State Defendants' Motion to Dismiss is DENIED.

Under the authority of *Emison v. Growe*, 507 U.S. 25, 34 (1993), we recognize that "the Constitution leaves with the States primary responsibility for apportionment of their federal congressional . . . districts." We do note, however, that after many months of work, the State authorities have been unable to produce a plan. In the light of *Emison*, a ruling on the Plaintiffs' Motion for Preliminary Injunction is hereby deferred, in order that State authorities may have further opportunity to timely carry out their duty.

We are, nevertheless, mindful of the fact that March 1, 2002, is the qualifying deadline for congressional candidates in Mississippi, and that any redistricting plan developed and adopted by State authorities must be submitted to the United States Department of Justice for preclearance. We are also mindful that the Department of Justice has sixty days to enter its objection to any plan adopted by the State authorities and if the Department of Justice objects to the plan, there is little or no possibility that the filing date of March 1 can be met. Furthermore, we think it imperative to have a plan in place by the qualifying deadline so that all election laws of the State of Mississippi can be met in a timely fashion in order to avoid candidate and voter confusion that results from the flux of delays, date changes, and continuances.

Accordingly, if it is not clear to this court by January 7, 2002 that the State authorities can have a redistricting plan in place by March 1, we will assert our jurisdiction and proceed expeditiously to rule on the Plaintiffs' Motion for Preliminary

Injunction, and if necessary, we will draft and implement a plan for reapportioning the state congressional districts. Finally, we note that because no preclearance with the Department of Justice is required for any plan that this three-judge federal district court implements, we do not have the same time constraints imposed on us as are imposed on the State under the Voting Rights Act.

SO ORDERED, this 5th day of December, 2001.

/s/ E. Grady Jolly
E. GRADY JOLLY,
CIRCUIT JUDGE

/s/ Henry T. Wingate
HENRY T. WINGATE,
UNITED STATES DISTRICT JUDGE

/s/ David C. Bramlette, III
DAVID C. BRAMLETTE, III
UNITED STATES DISTRICT JUDGE

APPENDIX G

Serial: 92338

IN THE SUPREME COURT OF MISSISSIPPI

No. 2001-M-01891

IN RE: CAROLYN MAULDIN, STACY SPEARMAN, DAVID MITCHELL, JAMES C. HAYS AND MISSISSIPPI REPUBLICAN EXECUTIVE COMMITTEE — Petitioners

(Filed Dec. 13, 2001)

ORDER

This matter came before the Court sitting en banc on the Petition for Writ of Mandamus filed by Carolyn Mauldin, Stacy Spearman, David Mitchell, James C. Hays and the Mississippi Republican Executive Committee, the Response filed by Beatrice Branch, Rims Barber, L.C. Dorsey, David Rule, Melvin Horton, James Woodard, Joseph P. Hudson and Robert Norvel, the Petition for Writ of Prohibition filed by the State of Mississippi, the Supplemental Petition for Writ of Prohibition filed by Carolyn Mauldin, Stacy Spearman, David Mitchell, James C. Hays and the Mississippi Republican Executive Committee, the Supplement to Petition for Writ of Prohibition filed by the State, and the Responses filed by the Honorable Pat Wise and other respondents. Petitioners ask that this Court order that the Plaintiffs' Amended Complaint filed in cause no. G-2001-1777 W/4, Hinds County Chancery Court, be dismissed, or that cause no. G-2001-1777 W/4 be transferred to

Hinds County Circuit Court. Petitioners also ask that this Court stay the trial set in cause no. G 2001-1777 W/4 for December 14, 2001. After due consideration the Court finds that the Hinds County Chancery Court has jurisdiction of this matter. The Court further finds that the request to dismiss the Plaintiffs' Amended Complaint is denied. The Court further finds that the request to transfer this cause to circuit court is denied, as is the request for stay of the December 14, 2001, trial date. Any congressional redistricting plan adopted by the chancery court in cause no. G-2001-1777 W/4 will remain in effect, subject to any congressional redistricting plan which may be timely adopted by the Legislature.

IT IS THEREFORE ORDERED that the Petition for Writ of Mandamus filed by Carolyn Mauldin, Stacy Spearman, David Mitchell, James C. Hays and the Mississippi Republican Executive Committee be and the same is hereby denied.

IT IS FURTHER ORDERED that the Petition for Writ of Prohibition filed by the State of Mississippi be and the same is hereby denied.

IT IS FURTHER ORDERED that the Supplemental Petition for Writ of Prohibition filed by Carolyn Mauldin, Stacy Spearman, David Mitchell, James C. Hays and the Mississippi Republican Executive Committee be and the same is hereby denied.

IT IS FURTHER ORDERED that the Supplement to Petition for Writ of Prohibition filed by the State of Mississippi be and same is hereby denied.

SO ORDERED, this the 13th day of December, 2001.

/s/ Edwin Lloyd Pittman
EDWIN LLOYD PITTMAN, CHIEF JUSTICE
FOR THE COURT

Smith, P.J., would dismiss Plaintiffs' Amended Complaint, or in the alternative, transfer to circuit court.

Cobb, J., not participating.

APPENDIX H

IN THE CHANCERY COURT OF THE
FIRST JUDICIAL DISTRICT OF HINDS COUNTY,
MISSISSIPPI

BEATRICE BRANCH; RIMS BARBER;
L.C. DORSEY; DAVID RULE; MELVIN HORTON;
JAMES WOODARD; JOSEPH P. HUDSON; and
ROBERT NORVEL PLAINTIFFS

V. No. G-2001-1777 W/4

ERIC CLARK, Secretary of State of
Mississippi; MIKE MOORE, Attorney General
of Mississippi; RONNIE MUSGROVE, Governor
of Mississippi DEFENDANTS

(Filed Dec. 31, 2001)

JUDGMENT

In accordance with the Opinion and Order entered on December 21, 2001, judgment is hereby granted in favor of the plaintiffs. Branch Plan 2A is adopted as the Court's redistricting plan as set forth in the appendix of the December 21, 2001 opinion, a copy of which is attached and incorporated hereto. If precleared under Section 5 of the Voting Rights Act, this plan shall govern the nomination and election of the United States House of Representatives from the State of Mississippi unless and until the Mississippi Legislature adopts a lawful plan that is precleared under Section 5. The state defendants are directed to submit the Court's plan for preclearance as required by the December 21, 2001 order. If the plan is

precleared, the state defendants are directed to take all necessary steps to implement the plan.

SO ORDERED AND ADJUDGED, this the 31st day of December, 2001.

/s/ Patricia D. Wise
CHANCERY COURT JUDGE

SUBMITTED BY COUNSEL FOR PLAINTIFFS

/s/ Carlton W. Reeves
CARLTON W. REEVES (MSB #8515)
PIGOTT REEVES JOHNSON & MINOR
ROBERT B. McDUFF (MSB # 2532)

APPENDIX I

IN THE CHANCERY COURT OF THE
FIRST JUDICIAL DISTRICT OF HINDS COUNTY,
MISSISSIPPI

BEATRICE BRANCH; RIMS BARBER;
L.C. DORSEY; DAVID RULE; MELVIN HORTON;
JAMES WOODARD; JOSEPH P. HUDSON; and
ROBERT NORVEL PLAINTIFFS

V. No. G-2001-1777 W/4

ERIC CLARK, Secretary of State of
Mississippi; MIKE MOORE, Attorney General
of Mississippi; RONNIE MUSGROVE, Governor
of Mississippi DEFENDANTS

(Filed Dec. 31, 2001)

ORDER

This matter came on for hearing on the Motion of Intervenors and Mississippi Republican Executive Committee to Vacate or Amend Judgment and for Other Relief. After reviewing the pleadings submitted and the arguments of counsel, the Court hereby finds the motion not well taken and denies same in all respects.

SO ORDERED AND ADJUDGED, this the 31st day of December, 2001.

/s/ Patricia D. Wise
CHANCERY COURT JUDGE

SUBMITTED BY COUNSEL FOR PLAINTIFFS

/s/ Carlton W. Reeves
CARLTON W. REEVES (MSB # 8515)
PIGOTT REEVES JOHNSON & MINOR
ROBERT B. McDUFF (MSB # 2532)

APPENDIX J

IN THE CHANCERY COURT OF THE
FIRST JUDICIAL DISTRICT
OF HINDS COUNTY, MISSISSIPPI

BEATRICE BRANCH; RIMS BARBER;
L.C. DORSEY; DAVID RULE; MELVIN HORTON;
JAMES WOODARD; JOSEPH P. HUDSON; and
ROBERT NORVEL PLAINTIFFS

V. No. G-2001-1777 W/4

ERIC CLARK, Secretary of State of
Mississippi; MIKE MOORE, Attorney General
of Mississippi; RONNIE MUSGROVE, Governor
of Mississippi DEFENDANTS

CAROLYN MAULDIN, STACY SPEARMAN,
DAVID MITCHELL, and JAMES CLAY
HAYS, JR. INTERVENORS

(Filed Dec. 21, 2001)

OPINION AND ORDER

This cause came on for hearing before the Court on Plaintiffs' complaint for injunctive and other equitable relief. The Court, having considered all the motions and memoranda of law, having heard five (5) days of testimony and arguments, and having received into evidence and studied the exhibits offered and entered, is fully advised of all premises and hereby orders as follows:

I. Factual and Procedural Background

On October 5, 2001, the Plaintiffs in this proceeding filed a complaint naming the Secretary of State, Attorney General, and Governor (collectively, "State defendants") as proper party defendants. The complaint alleges *inter alia* that the Legislative Standing Joint Congressional Redistricting Committee failed to timely submit Mississippi's new redistricting plan by December 3, 2001, pursuant to Miss. Code Ann. Sec. 5-3-129 (Rev. 1991). The Plaintiffs seek an injunction "adopting and directing the implementation of a congressional redistricting plan." On October 7, 2001, the Plaintiffs amended their initial complaint, adding additional parties as Plaintiffs. On November 13, 2001, the State Defendants moved to dismiss the underlying lawsuits and Carolyn Mauldin, Stacy Spearman, David Mitchell, and James Clay Hayes, Jr. (collectively "Intervenors"), by and through counsel, moved this Court to be allowed to intervene in this action. On November 19, 2001, this Court allowed the Intervenors to participate in this action. After hearing oral arguments, receiving written briefs, and being fully advised on all premises, this Court denied the Defendants' Motion to Dismiss and the Defendants' subsequent Supplemental Motion to Dismiss. This Court denied the Intervenors' Motion to Dismiss on December 11, 2001.

On December 6, 2001, this Court allowed the State Defendants to add the Mississippi Republican and Democratic Executive Committees as Defendants. After careful reconsideration, the Court found that any additional parties involuntarily joined herein who choose not to submit themselves to the Court's jurisdiction would not serve the interest of the state authorities to proceed expeditiously. This joinder included voluntary participation in the Court's

Scheduling Order dated December 7, 2001.

Feeling aggrieved the Defendants and Intervenors petitioned the Mississippi Supreme Court for a Writ of Prohibition to prohibit this Court from proceeding with the triable issues of fact and law presented by Plaintiffs' complaint. The Defendants and Intervenors additionally sought a stay of the instant matter pending resolution of these issues on appeal. The Mississippi Supreme Court denied the Defendants' and Intervenors' Writ of Prohibition and Petitions for stay in all respects on December 13, 2001. The Supreme Court's order stated specifically the following:

> After due consideration, the Court finds that the Hinds County Chancery Court has jurisdiction of this matter. The Court further finds that the request to dismiss the Plaintiffs' amended complaint is denied. The Court further finds that the request to transfer this cause to circuit court is denied, as is the request for a stay of the December 14, 2001, trial date. Any congressional redistricting plan adopted by the chancery court in cause no. G-2001-1777W/4 will remain in effect, subject to any congressional redistricting plan which may be timely adopted by the Legislature.

In Re Maudlin, No. 2001-M-01891 (Miss. Dec. 13, 2001).

This Court commenced the evidentiary trial of this matter on December 14, 2001. Trial continued through Tuesday, December 18, 2001 with closing arguments being conducted Wednesday, December 19, 2001. During the course of the trial, eleven (11) redistricting plans were submitted and received into evidence. Approximately twenty (20) witnesses testified at the trial of this matter. The testimony offered in this matter shed

light on the contested issues involved in this litigation. However, the Court specifically notes that the State Defendants neither presented evidence, proposed any redistricting plans, nor participated in any fashion in these trial proceedings

II. Evaluation of Proposed Plans

While this Court recognizes its obligations that any plan of reapportionment must comply with the United States Constitution and the Voting Rights Act, this Court also recognizes the right of the State of Mississippi, by and through the Joint Standing Committee on Congressional Redistricting of the Mississippi Legislature, to adopt the State of Mississippi's individualized criteria for reapportionment. This criteria was several fold. First, the Redistricting Committee wanted to ensure that the population of each district was nearly equal as practicable. Second, the Committee desired the districts to be contiguous. Last, the Committee dictated that any plan of reapportionment must comply with both Sections 2 and 5 of the Voting Rights Act of 1965, as well as the United States Constitution. This Court also recognizes that any proposed redistricting plan must be evaluated in the light of the equitable principles of fairness and substantial justice.

A.Constitutional Requirements

The "one person, one vote" standard articulated in Article I, Section 2 of the United States Constitution guarantees the right of each citizen to an equal voice in the selection of a representative. *Wesberry v. Sanders*, 376 U.S. 1 (1964). Said another way, "one man's vote in a congressional election is to be worth as much as another's." *Id* at 8. As a result, the population within each state's congressional districts must be as nearly equal as practicable. *Id.* at 7-8. This requires a

good-faith effort to achieve precise mathematical equality. Any deviations from precise equality, no matter how small, must be individually justified, unless unavoidable. *See Karcher v. Daggett*, 462 U.S. 725 (1983).

"While it may not be possible to draw congressional districts with mathematical precision, that is no excuse for ignoring our Constitution's plain objective of making equal representation for equal numbers of people the fundamental goal for the House of Representatives." *Wesberry*, 376 U.S. at 18. The Supreme Court more precisely refined the *Wesberry* standard:

> [T]he "as nearly as practicable" standard requires that the State make a good-faith effort to achieve precise mathematical equality. *See Reynolds v. Sims*, 377 U.S. 533, 577 (1964). Unless population variances among congressional districts are shown to have resulted despite such effort, the State must justify each variance no matter how small.

Kirkpatrick v. Preisler, 394 U.S. 526, 530-31 (1969). More recently, the Supreme Court "reaffirm[ed] that there are no *de minims* population variations, which could practicably be avoided, but which nonetheless meet the standard of Art. I, § 2, without justification." *Karcher*, 462 U.S. at 734.

The several plans submitted into evidence for this Court's consideration were as follows: (1) the plan passed by the Mississippi House of Representatives (Exhibit 4); (2) the plan passed by the Mississippi Senate (Exhibit 8); (3) Branch Plaintiffs' plan 1 (Exhibit 15); (4) Branch plan 2 (Exhibit 20); (5) Branch plan 1A (zero deviation) (Exhibit 38); (6) Branch plan 2A (zero deviation) (Exhibit 40); (7) Original Kirksey plan

(Exhibit 44); (8) Kirksey plan 2 (Exhibit 47); (9) Modified Kirksey plan (Exhibit 49); (10) Kirksey plan 2-no deviation (Exhibit 48); and (11) Modified Kirksey plan-no deviation (Exhibit 50). While the Court recognizes that eleven plans were introduced into evidence, at trial the parties basically advanced two plans in support of their respective positions. The Plaintiffs urged this Court to adopt Branch plan 2A with zero population deviation. On the other hand, the Intervenors urged adoption of the modified Kirksey plan with no deviation in the population.

The House plan has a total deviation of 0.02%. The Senate plan has a total deviation of 0.07%. These minor deviations apparently exist only because of the effort to avoid splitting precincts. While such minor deviations may be appropriate in a legislative plan, a court-ordered plan should contain districts with populations as equal as practicable to fully satisfy the exacting federal constitutional standards regarding deviation in congressional plans. The Branch and Kirksey plans have been altered so that the deviation is zero.

Here, both parties have presented plans, which have been described as providing "zero deviation" or "no deviation" from equality. The State of Mississippi has 2,844,658 inhabitants according to the 2000 census. Divided by four, this results in a figure of 711,164.5. Thus, a deviation as low as possible will lead to two districts with 711,164 people and two districts with 711,165 people. The Branch plan 2A and the modified Kirksey plan do this. The maximum population deviation in any district under the Court's plan is one person. That deviation was unavoidable because Mississippi's total population is not divisible by four.

B. Voting Rights Act

Federal law also places constraints upon state plans for congressional redistricting through the provisions of the Voting Rights Act. The requirements of § 2 of the Voting Rights Act, 42 U.S.C. § 1973, are clear. Because the application of § 2 to this case has neither been pled nor proven by any party, this Court determines that § 2 has not been violated by any of the plans submitted for the Court's consideration.

Section 5 of the Voting Rights Act, 42 U.S.C. 1973c, forbids changes in state election laws which "have the effect of denying or abridging the right to vote on account of race or color." This Court has complied with the redistricting guidance recently issued by the Department of Justice. Its published standards declare:

> A proposed redistricting plan ordinarily will occasion an objection by the Department of Justice if the plan reduces minority voting strength relative to the benchmark plan and a fairly-drawn alternative plan could ameliorate or prevent that retrogression.

Office of the Assistant Attorney General, Civil Rights Division; Guidance Concerning Redistricting and Retrogression under Section 5 of the Voting Rights Act, 42 U.S.C. 1973c, 66 Fed Reg. 5412, 5413 (Jan. 18, 2001). In determining reduction in voting strength, the Department of Justice is guided by the most recent census data.

> For redistricting after the 2000 Census, the Department of Justice will, consistent with past practice, evaluate redistricting submissions using the 2000 Census population data released by the Bureau

> of the Census for redistricting pursuant to Public Law 94-171, 13 U.S.C. 141(c).

Id. at 5414.

Both plans that the parties have urged for adoption have retrogression in the majority-minority District 2. The 2000 census indicates that existing District 2 has a Black voting age population of 61.1 percent. *See* Exhibit 26, Population Summary Report. Under the Branch plan 2A, the Black voting age population is 59.03 percent. The modified Kirksey plan gives District 2 a Black voting age population of 59.94 percent. The difference in the deviation of the Black voting age population between the Branch plan 2A and the modified Kirksey plan is of no consequence in this Court's opinion since the majority-minority status of District 2 is not affected. Thus, the Court finds that retrogression is not an issue in either plan and that both plans satisfy Section 5 of the Voting Rights Act.

C. Non Constitutional Considerations

The Court acknowledges several non constitutional considerations urged by the Intervenors. However, the Court also acknowledges the criteria of the Joint Standing Committee on Congressional Redistricting as testified to by its attorney, Tommie Cardin, and the general principles of equity.

The neutral criteria that has evolved in the federal line of cases regarding redistricting are as follows: (1) providing geographically compact and contiguous districts; (2) adhering to traditional and historic regional and district boundaries; (3) preserving communities of interest; and (4) avoiding unnecessary or invidious outdistricting of incumbents. *Balderas v. Texas*, No. 6:01CV158 (E.D. Tex. Nov 14, 2001),

slip op.

1. Geographically compact and contiguous districts

Under the federal line of cases, a court may consider whether the districts are geographically compact and contiguous. Each plan urged by the Plaintiffs and the Defendants provides contiguous districts. Therefore, contiguity of the districts is not an issue.

The Court next must consider the geographical compactness of the districts within the plans. The Court finds it informative that the Intervenors' expert witness, Dr. John Alford, under cross examination, admitted that compactness is not a federal requirement that states are bound to respect during the redistricting process. At first glance, the modified Kirksey plan may appear more attractive. However, this Court must evaluate the plans beyond the mere appearances. Looks can be deceiving.

As noted earlier, contiguity, not compactness, was one of the three criteria announced by the Joint Standing Committee on Congressional Redistricting. The Court further notes that the current legislative plan is not compact. Therefore, this criteria, taken in conjunction with the testimony of the Intervenors' expert, Dr. John Alford, and the Court's equity principles of fairness, leads this Court to the conclusion that compactness is not a priority for redistricting in the State of Mississippi. This Court rejects the Intervenors' arguments regarding the neutral consideration of compactness.

2. Traditional and Historic Regional Boundaries

The Branch plan 2A preserves the historical boundaries of Districts 3 and 4, while the modified Kirksey plan completely dismantles District 4. This, the Court finds disturbing. According to the testimony of former Congressman Wayne Dowdy, a successful candidate in District 4, "traditionally, there has been a congressional district that included Southwest Mississippi going back for decades and decades. The Southwest part of the State has been traditionally a seat in Congress." The former Congressman goes on to state "the modified Kirksey plan splits [District 4] into three parts and tacks one onto the coast, one onto the Delta district and one onto the third district. . . . It's ugly insofar as Southwest is concerned." While the Court disregards the comments on the appearance of the district, the Court found Representative Dowdy's testimony instructive with regard to the traditional and historic boundaries of the district. The Court notes that under the current congressional districts, the four major universities are in different districts. The Court further notes that the two military bases placed together in the Branch plan 2A are also placed together in the current congressional district.

The Court finds that in contrast with the modified Kirksey plan, the Branch plan 2A preserves the integrity of a Southwest Mississippi district, and it places the electorate of Southwest Mississippi in a position where it would not be ignored. The Court notes that in the interest of preserving historical boundaries, that the Branch plan 2A most closely resembles current Districts 3 and 4.

3. Communities of Interest

While the Court recognizes that communities of interest is a non constitutional consideration, this Court will address this issue. This Court rejects the argument that placing high growth areas in the same district would jeopardize federal funding to those cities. Conversely, the Court's opinion is that it would do just the opposite since the person representing District 1 will have the opportunity to concentrate on the common issues of larger cities, much like former Congressman Sonny V. Montgomery who championed in the area of veteran and military affairs. Congressman Montgomery was able to accomplish these goals although two military bases were located in the district.

Under the Branch 2A plan, the Intervenors assert that the plan places Desoto, Lee, and parts of Rankin and Madison Counties all in proposed District 1, and that in fact, there would be counties in competition. It is this Court's opinion that these counties in fact are high growth areas. Additionally, they are all primarily bedroom communities and have had extensive suburban growth. They all outline large metropolitan areas and have access to the best transportation system that this State has to offer, with a transportation artery of 1-55 and accessibility to major airports. This Court would agree that common interests may yield common problems. Fortunately, these problems and interests can be addressed in a like and similar manner. This would give any person representing this district an opportunity to focus on issues that would be common to high growth areas within the district and in the State of Mississippi.

Regarding the issue of competition, this Court is persuaded by the testimony of former Congressmen Wayne Dowdy and Bob Livingston. Both witnesses agreed that the State

Congressional delegation should work and have worked well together for the benefit of the State of Mississippi in securing federal funding. Congressman Dowdy stated that even though there may be competition for federal dollars, "[t]here's no way Rankin County with that huge mass of population and that huge tax base will ever be ignored by anybody." Additionally, the Court emphasizes that the present District 1 representative is a member of the powerful House Appropriations Committee. Further, this Court weighed the testimony of Bob Livingston, former Chairman of the House Appropriations Committee. Congressman Livingston said that it is preferable to place high-growth areas in separate congressional districts for purposes of lobbying for federal money. He also testified that no matter where the high-growth areas are situated, the state's delegation ultimately must work together. He stated that all members of the state's delegation must work through the member or members who happen to be on the Appropriations Committee, which in Mississippi's case is Congressman Roger Wicker of District 1. Congressman Livingston testified that Congressman Wicker does a good job of balancing the appropriations needs of the entire State of Mississippi; likewise, Senators Trent Lott and Thad Cochran do a good job of balancing the state's needs and obtaining federal appropriations. Finally, Congressman Livingston testified that redistricting involves many factors other than the appropriations process.

"The community of interest concept could be employed in every congressional district across the country in which a congressional incumbent feels threatened by an impending redistricting." *Hastert v. State Bd. of Elections*, 777 F. Supp. 634, 660 (N.D. Ill. 1991). This Court is of the opinion, like in *Hastert*, "that there is a place where particular non constitutional communities of interest should be considered . .

. [and] [t]hat place is the halls and committee chambers of the State legislature." *Id.* "The courtroom is not the proper arena for lobbying efforts regarding the districting concerns of local, non constitutional communities of interest." *Id.* After careful consideration, this Court rejects the Intervenors' communities of interest arguments.

4. Treatment of Incumbents

The next issue this Court will address is the equitable treatment of the two incumbents. First, this Court is mindful of the reason we are here today – the State of Mississippi is losing one of its congressional districts because the population of the State did not grow at the national rate. After reviewing the population of each current congressional district, it makes logical sense to combine the two slowest-growth, non constitutionally protected districts. Said another way; it is only equitable to combine the current Districts 3 and 4, since due to their slower growth rate, Mississippi is having to reduce its congressional delegation from five to four.

With this in mind, the Court is faced with drawing one congressional district out of two that is equitable and fair under the circumstances. The maintenance of incumbents provides the electorate with some continuity. However, this Court has not and will not concern itself with mere partisan politics. The true purpose of the redistricting process is to afford the electorate orderly, timely, and efficient elections without the flux of delays, date changes, and continuances. The Court finds most instructive Dr. Alford's testimony that the judiciary should not consider politics as a criterion when courts are required to act in the legislature's stead as it relates to redistricting.

Combining Districts 3 and 4 into a single district that is equitable for both incumbents is a difficult task. Both the House and Senate plans combine portions of existing Districts 3 and 4 into a single district. Although the two plans are different, each contains a combined district linking Southwest Mississippi to East Central Mississippi. Congressman Chip Pickering presently represents District 3, and District 4 is represented by Congressman Ronnie Shows. For purposes of this equitable analysis, the political affiliations of Congressmen Pickering or Shows are irrelevant. These gentlemen are the two most junior members of the Mississippi delegation. Under the present congressional scheme, their districts adjoin each other.

Like the Senate and House plans, the Branch 2A plan also contains a combination district linking Southwest Mississippi with East Central Mississippi. The modified Kirksey plan does not. The combined District 3 in the modified Kirksey plan is fully anchored in East Central Mississippi. It contains all or part of eighteen of the nineteen counties that are fully or partially in the existing District 3. By contrast, the modified Kirksey plan contains all or part of only five of the fifteen counties fully or partially in the existing District 4. The other ten counties wholly or partially in present District 4 are divided elsewhere, with five going to proposed District 2 and five to proposed District 4. Thus; under the modified Kirksey plan, the present District 4 is completely dismantled. Again, the Court finds this disturbing.

The population analysis presented by the Plaintiffs indicates that in the modified Kirksey plan, 73% of the proposed District 3 comes from existing District 3, while only 20% comes from existing District 4. Portions of each of current Districts 1, 2, 3, and 5 compose at least 60% of one of the new districts. Current District 4, however, is completely

fragmented. The Senate plan suffers from the same problem. The population analysis shows that 62% of the proposed District 3 in that plan comes from the present District 3, while only 34% comes from present District 4. The House plan contains a combination district that is composed of roughly equivalent portions of present Districts 3 and 4.

The Branch plan 2A contains a balanced combination district. Forty-seven percent of the proposed District 3 in the Branch plan comes from present District 3, and 44% comes from present District 4. Most of the remaining 9% come from present District 1, which is represented by Congressman Roger Wicker. The combination district in the Branch plan 2A allows for a level playing field for the incumbents. The plaintiffs' expert, Dr. Leslie McLemore, Professor of Political Science at Jackson State University and a noted authority on Mississippi politics, testified as an expert. Dr. McLemore's testimony substantiated that under the Branch plan 2A, a congressional race between the incumbents Ronnie Shows and Chip Pickering would be competitive, and either candidate's chances of winning were more equalized under the Branch plan 2A than the modified Kirksey plan. Dr. McLemore's testimony was not refuted on this issue.

When a court adopts a redistricting plan, fairness to the incumbents is a paramount consideration. This is particularly true where a seat is lost and incumbents must be pitted against one another. This Court is of the opinion that the fundamental principles of equity as they relate to the incumbents dictate adoption of the Branch plan 2A.

III. Conclusion

Ultimately, the key issue is equity. This problem was

caused by the loss of a seat. The resolution must be one that is fair. After meeting the constitutional and Voting Rights Act requirements, the plan ordered by this Court should be based on the equitable principles of fairness.

Rather than reaching some sort of compromise between existing Districts 3 and 4, the modified Kirksey plan totally dismantles and fragments District 4. The Branch plan 2A best achieves the goals of fairness. It contains features of both the House and Senate plans, and effects a compromise. *Cf., Ajamian v. Montgomery County*, 639 A.2d 157, 170 (Md. App. 1994) ("Redistricting is both an art and a science; it is by its very nature founded on compromise and accommodation"). It adheres to state redistricting policies to the extent possible while also attempting to achieve fairness. *See, Cook v. Luckett*. 735 F 2d 912, 918 (5th Cir. 1984) ("A court must honor state policies to the greatest extent possible when choosing among available plans or fashioning its own.").

IT IS THEREFORE ORDERED AND ADJUDGED, that the Branch plan 2A be and is hereby adopted as the Court's redistricting plan as set forth in the Appendix, and said plan shall govern the nomination and election of members of the House of Representatives from the State of Mississippi; and

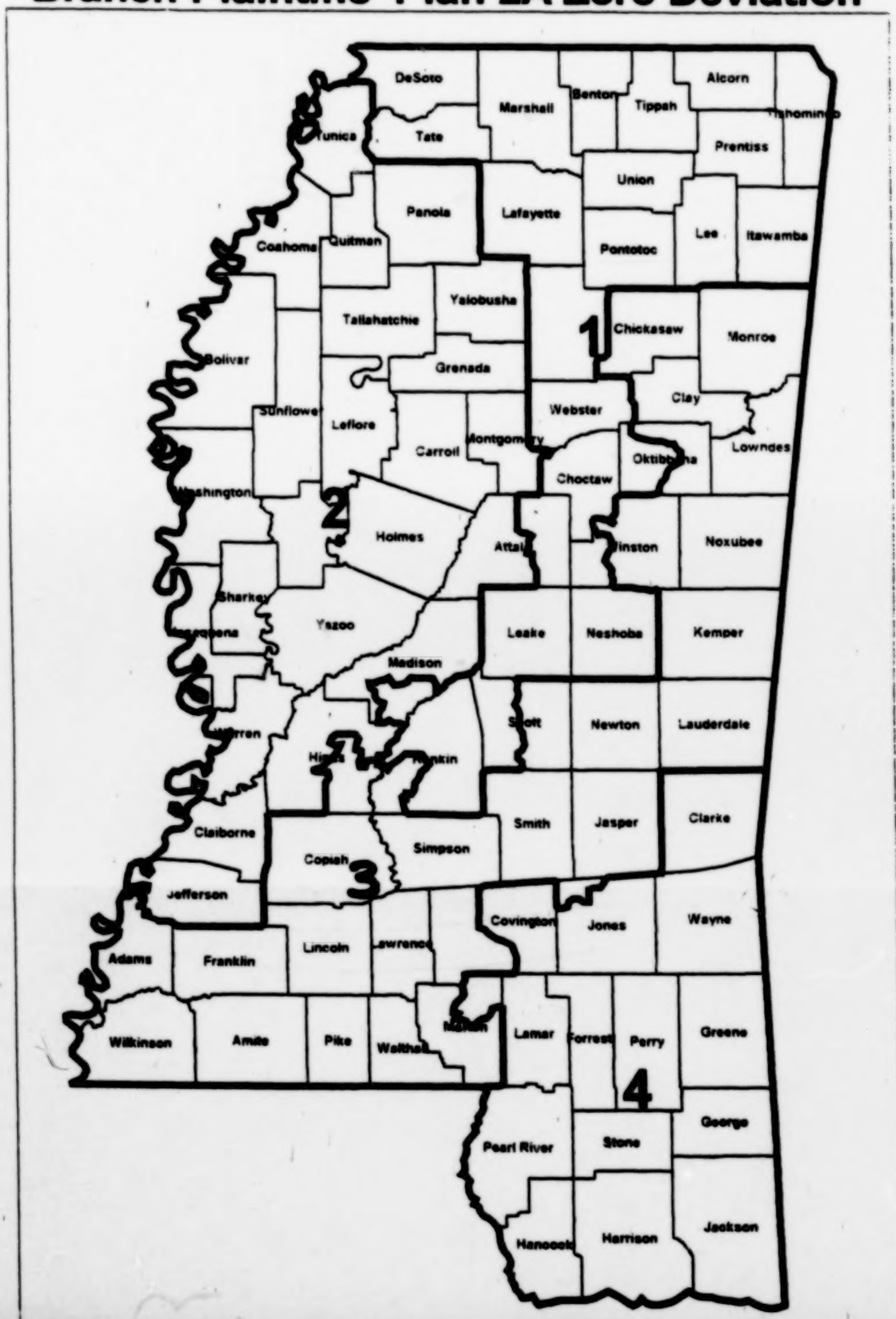
IT IS FURTHER ORDERED AND ADJUDGED, that the State Board of Elections, in accordance with its duties under the Mississippi Election Laws shall forthwith implement the terms of the Court's redistricting plan by filing said plan with the Department of Justice on or before December 26, 2001, by 5 o'clock eastern standard time and by filing a certificate of compliance with this Court on or before December 26, 2001, by 5 o'clock central standard time.

The Clerk of the Chancery Court is hereby directed to enter this final judgment in accordance with the Order set forth above.

SO ORDERED, this 21st day of December, 2001.

/s/ Patricia D. Wise
CHANCELLOR

Branch Plaintiffs' Plan 2A Zero Deviation



Summary Report

Branch Plaintiffs' Plan 2A Zero Deviation

District	Population	Deviation	% Dev.	Total Voting Age Population (VAP)	AP Black VAP	% AP Black VAP
1	711,165	0	0	525,680	94,243	17.93
2	711,165	0	0	502,604	296,696	59.03
3	711,164	-1	0	519,152	194,829	37.53
4	711,164	-1	0	522,035	103,226	19.77
Totals:	2,844,658	1	0	2,069,471	688,994	33.29

Plan: Branch Plan 2A Zero Deviation
Plan Type:
Administration:
User:

Plan Components Report

Wednesday, December 19, 2001 11:57 AM

	Population	[18+ Pop]	[18+ AP Blk]
District 1			
Alcorn County	34,558	26,310	2,663
Attala County			
VTD: Berea	217	170	26
VTD: Ethel	842	614	201
VTD: Liberty Chapel	470	351	78
VTD: McCool	597	466	146
VTD: Providence	516	407	37
VTD: Thompson	269	200	12
VTD: Zama	561	418	117
Attala County Subtotal	**3,472**	**2,626**	**617**
Benton County	8,026	5,867	1,949
Calhoun County	15,069	11,270	2,904
Choctaw County	9,758	7,044	1,941
DeSoto County	107,199	77,005	58,132
Itawamba County	22,770	17,257	1,074
Lafayette County	38,744	31,170	6,955
Leake County	20,940	15,308	5,333
Lee County	75,755	54,793	11,974
Madison County			
VTD: Bear Creek	2,461	1,749	501

VTD: Cobblestone Church Of God	5,472	4,050	311
VTD: Gluckstadt			
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BLK: 0302041023	89	53	3
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BLK: 0303011001	626	549	30
BLK: 0303011002	101	52	0
BLK: 0303011003	23	13	0
BLK: 0303011004	95	58	7
BLK: 0303011005	72	45	8
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BLK: 0303011007	477	323	56
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BLK: 0303011011	0	0	0
BLK: 0303011012	14	10	0
BLK: 0303011013	0	0	0
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BLK: 0304002052	12	6	6
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BLK: 0304002122	54	46	4

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BLK: 0304002129	7	6	0
BLK: 0304002130	30	29	0
BLK: 0304002131	11	11	0
BLK: 0304002132	14	10	0
BLK: 0304002133	0	0	0
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BLK: 0304002135	0	0	0
BLK: 0304002136	0	0	0
BLK: 0304002137	2	2	0
BLK: 0304002162	0	0	0
BLK: 0304002163	0	0	0
BLK: 0304002164	0	0	0
BLK: 0304002165	0	0	0
BLK: 0304002166	0	0	0
BLK: 0304002167	6	6	0
BLK: 0304002168	0	0	0
BLK: 0304002169	0	0	0
BLK: 0304002170	2	2	0
BLK: 0304002172	33	25	1
BLK: 0304002185	23	20	0
BLK: 0304002186	45	43	0
BLK: 0304002187	56	50	1
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BLK: 0304002190	38	27	6
BLK: 0304002191	4	4	0
BLK: 0304002192	3	2	0
BLK: 0304002193	12	7	0

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BLK: 0304002195	5	3	0
BLK: 0304002196	0	0	0
BLK: 0304002197	0	0	0
BLK: 0304002198	15	12	11
BLK: 0304002199	339	235	50
BLK: 0304002200	18	11	2
BLK: 0304002201	19	14	0
BLK: 0304002270	4	2	0
BLK: 0304002274	0	0	0
BLK: 0304002275	24	22	20
BLK: 0304002276	15	12	0
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BLK: 0304002994	0	0	0
BLK: 0304002995	0	0	0
BLK: 0304002996	0	0	0
BLK: 0304002997	0	0	0
BLK: 0304002998	0	0	0
VTD Gluckstadt Subtotal	**3,412**	**2,505**	**323**
VTD: Highland Colony Bap. Ch.	2,137	1,440	294
VTD: Madison 1	1,651	1,149	19
VTD: Madison 2	3,585	2,582	65
VTD: Madison 3	3,853	2,658	173
VTD: Madisonville	427	323	82
VTD: Main Harbor	1,953	1,574	53
VTD: Ridgeland 1	3,565	2,836	510

VTD: Ridgeland 3	3,990	3,138	1,033
VTD: Ridgeland 4	2,571	2,221	474
VTD: Ridgeland First Meth. Ch.	2,941	1964	531
VTD: Trace Harbor	1,820	1,277	34
VTD: Victory Baptist Church	3,788	2,449	69
VTD: Whisper Lake	1,968	1,383	128
Madison County Subtotal	**45,594**	**33,298**	**4,600**
Marshall County	34,993	25,695	12,241
Neshoba County	28,684	20,583	3,647
Oktibbeha County			
VTD: Adaton	861	612	141
VTD: Bradley	330	253	58
VTD: Craig Springs	262	202	7
VTD: Double Springs	492	386	18
VTD: Maben	677	465	216
VTD: North Longview	982	732	134
VTD: Self Creek	624	482	68
VTD: South Longview	427	320	69
VTD: South Starkville	7,044	5,813	1,235
VTD: Sturgis	1,327	996	261
VTD: West Starkville	4,838	3,722	920
Oktibbeha County Subtotal	**17,864**	**13983**	**3,127**
Pontotoc County	26,726	19,351	2,543
Prentiss County	25,556	19,170	2,352
Rankin County			
VTD: Antioch	356	262	9
VTD: Castlewoods	6,303	4,600	432

VTD: Cato	1,375	964	242
VTD: Crest Park	2,890	2,096	123
VTD: Crossroads	1,121	816	66
VTD: Cunningham Heights	1,552	1,150	87
VTD: Dry Creek	1,785	1,267	426
VTD: East Brandon	1,580	1,174	106
VTD: East Crossgates	3,238	2,432	44
VTD: Eldorado	3,122	2,417	369
VTD: Fannin	4,067	2,913	419
VTD: Flowood	1,473	1,243	161
VTD: Grants Ferry	4,142	2,890	140
VTD: Holbrook	4,525	3,390	277
VTD: Johns	763	570	90
VTD: Leesburg	1,255	911	113
VTD: Mayton	344	227	58
VTD: Mullins	1,088	746	429
VTD: North Brandon	4,300	3,167	297
VTD: North McLaurin	1,879	1,410	63
VTD: North Pearson	503	381	41
VTD: North Richland	2,141	1,630	122
VTD: Northeast Brandon	1,272	880	302
VTD: Oakdale	1,289	920	58
VTD: Patton Place	1,702	1,255	141
VTD: Pearl	1,624	1,203	59
VTD: Pelahatchie	3,708	2,706	636
VTD: Pisgah	2,301	1,603	713
VTD: Puckett	1,220	870	212
VTD: Reservoir	4,468	3,512	90
VTD: Shiloh	323	239	78
VTD: South Brandon	2,289	1,672	46
VTD: South Crossgates	1,574	1,366	67
VTD: South McLaurin	2,694	1,994	69
VTD: Star	1,675	1,248	270
VTD: West Crossgates	2,184	1,662	92

VTD : West Pearl	3,351	2,449	428
Rankin County Subtotal	**81,476**	**60,235**	**7,375**
Scott County			
VTD: Clifton	208	140	18
VTD: Contrell	752	481	354
VTD: Cooperville	541	424	26
VTD: East-West Morton	3,146	2,331	509
VTD: Forkville	398	314	8
VTD: Liberty (28123405)	1,068	752	142
VTD: Ludlow	815	608	165
VTD: North Morton	2,327	1,629	709
VTD: Pulaski	606	474	38
VTD: Springfield	643	496	4
Scott County Subtotal	**10,504**	**7,649**	**1,973**
Tate County	25,370	18,502	5,404
Tippah County	20,826	15,620	2,310
Tishomingo County	19,163	14,724	478
Union County	25,362	18,783	2,573
Webster County	10,294	7,607	1,410
Winston County			
VTD: Calvary	339	258	80
VTD: Ford School	427	332	46
VTD: Hinze	69	52	1
VTD: Liberty	594	413	239
VTD: Lobutcha	292	206	96
VTD: Mars Hill	343	262	43
VTD: Vowell	263	201	99
VTD: Zion Ridge			
BLK: 9502001005	1	1	0
BLK: 9502001006	40	34	11

BLK: 9502001007	51	40	31
BLK: 9502001008	0	0	0
BLK: 9502001009	1	1	1
BLK: 9502001010	3	3	1
BLK: 9502001012	14	8	4
BLK: 9502001014	3	3	0
BLK: 9502001015	0	0	0
BLK: 9502001025	19	14	14
BLK: 9502001027	3	2	2
VTD Zion Ridge Subtotal	**135**	**106**	**64**
Winston County Subtotal	**2,462**	**1,830**	**668**
District 1 Subtotal	**711,165**	**525,680**	**94,243**
District 2			
Attala County			
VTD: Aponaug	514	390	81
VTD: Carmack	399	317	0
VTD: East	1,561	1,212	121
VTD: Hesterville	516	363	47
VTD: McAdams	556	407	223
VTD: Newport	656	489	230
VTD: North Central	492	374	32
VTD: Northeast	2,711	1,887	1,323
VTD: Northwest	2,029	1,535	543
VTD: Possumneck	378	273	95
VTD: Sallis	1,519	1,026	658
VTD: South Central	2,007	1,511	494
VTD: Southwest	885	674	422
VTD: Williamsville	1,966	1,478	460

Attala County Subtotal	**16,189**	**11,936**	**4,729**
Bolivar County	40,633	28,587	17,177
Carroll County	10,769	8,134	2,801
Claiborne County	11,831	8,724	7,172
Coahoma County	30,622	20,514	13,244
Grenada County	23,263	16,945	6,408
Hinds County			
VTD: 1	297	251	146
VTD: 10	731	546	529
VTD: 11	984	745	698
VTD: 12	1,062	764	761
VTD: 13	1,309	955	944
VTD: 14	1,672	1,476	201
VTD: 15	488	410	68
VTD: 16	2,132	1,530	1,122
VTD: 17	853	694	42
VTD: 18	1,227	899	863
VTD: 19	1,148	854	846
VTD: 2	940	710	697
VTD: 20	1,880	1,237	1,222
VTD: 21	1,022	637	576
VTD: 22	2,605	1,817	1,775
VTD: 23	2,484	1,680	1,678
VTD: 24	2,382	1,345	1,201
VTD: 25	2,463	1,511	1,401
VTD: 26	1,328	844	709
VTD: 27	1,931	1,512	1,492
VTD: 28	2,053	1,630	1,615
VTD: 29	1,037	804	800
VTD: 30	1,426	995	987
VTD: 31	1,939	1,452	1,448
VTD: 32	1,362	1,038	62
VTD: 33	1,252	934	16

VTD: 34	2,184	1,700	10
VTD: 35	2,401	1,773	164
VTD: 36	1,739	1,383	437
VTD: 37	1,636	1,306	421
VTD: 38	1,442	1,007	568
VTD: 39	1,695	1,154	1,072
VTD: 4	1,121	743	736
VTD: 40	2,391	1,752	1,686
VTD: 41	2,818	2,004	1,973
VTD: 42	3,156	2,319	1,800
VTD: 43	4,359	2,968	2,360
VTD: 44	3,002	2,290	465
VI'D: 45	2,789	2,281	78
VTD: 46	2,367	1,875	268
VTD: 47	3,107	2,444	2,024
VTD: 5	1,995	1,702	731
VTD: 50	968	706	650
VTD: 51	1,013	677	664
VTD: 52	2,319	1,598	1,546
VTD: 53	585	391	380
VTD: 54	1,149	887	745
VTD: 55	1,848	1,226	1,132
VTD: 56	1,027	610	592
VTD: 57	1,436	940	914
VTD: 58	2,025	1,477	1,431
VTD: 59	3,079	1,797	1,742
VTD: 6	2,314	1,751	946
VTD: 60	987	597	549
VTD: 61	2,406	1,524	1,439
VTD: 62	2,545	1,631	1,439
VTD: 63	1,062	772	767
VTD: 64	1,101	821	805
VTD: 66	231	160	158
VTD: 67	2,186	1,408	1,194

VTD: 68	4,122	2,842	1,780
VTD: 69	2,083	1,340	846
VTD: 70	1,230	774	393
VTD: 71	2,069	1,391	706
VTD: 72	2,477	1,506	869
VTD: 73	1,887	1,367	573
VTD: 74	1,597	1,099	413
VTD: 75	1,430	943	425
VTD: 78	4,337	3,674	435
VTD: 79	2,990	2,289	876
VTD: 8	1,412	1,211	148
VTD: 80	3,625	2,332	2,147
VTD: 81	2,131	1,614	1,493
VTD: 82	2,252	1,564	1,501
VTD: 83	4,481	3,123	2,860
VTD: 84	420	326	295
VTD: 85	3,943	2,759	2,738
VTD: 86	2,615	1,506	1,421
VTD: 87	2,085	1,371	952
VTD: 88	2,937	2,101	1,630
VTD: 89	2,114	1,433	907
VTD: 9	1,836	1,585	75
VTD: 90	1,666	1,213	498
VTD: 92	3,598	2,481	1,109
VTD: 94	3,657	2,442	1,835
VTD: 95	910	657	180
VTD: Bolton	1,894	1,406	943
VTD: Brownsville	754	556	315
VTD: Cayuga	495	379	221
VTD: Chapel Hill	1,378	980	454
VTD: Cynthia	753	536	409
VTD: Edwards	3,711	2,548	1,901
VTD: Jackson State	1,658	1,596	1,588
VTD: Learned	924	661	309

VTD: Pinehaven	2,749	1,932	828
VTD: Pocahontas	620	483	310
VTD: Raymond 1	3,346	2,237	913
VTD: Tinnin	1,153	789	252
VTD: Utica 1	1,297	953	388
VTD: Utica 2	1,396	965	737
Hinds County Subtotal	**190,522**	**135,908**	**90,458**
Holmes County	21,609	14,670	10,951
Humphreys County	11,206	7,541	5,069
Issaquena County	2,274	1,645	968
Jefferson County	9,740	6,937	5,864
Leflore County	37,947	26,667	16,922
Madison County			
VTD: Bible Church	964	509	495
VTD: Camden	1,703	1,112	919
VTD: Cameron	120	96	47
VTD: Canton Pct. 7	707	519	464
VTD: Canton Precinct 1	2,644	1,824	1,195
VTD: Canton Precinct 2	2,511	1,886	799
VTD: Canton Precinct 3	603	413	265
VTD: Canton Precinct 4	3,332	2,263	1,830
VTD: Canton Precinct 5	1,732	1,082	1,072
VTD: Couparle	60	48	40
VFD: Flora	1,756	1,301	349
VTD: Gluckstadt			
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BLK: 0304002119	1	1	1
BLK: 0304002157	0	0	0
BLK: 0304002158	2	2	1
VTD Gluckstadt Subtotal	**20**	**14**	**13**

VTD: Liberty	2,118	1,426	1,262
VTD: Lorman-Cavalier	1,531	1,448	410
VTD: Luther Branson School	1,207	800	658
VTD: Mad. Co. Bap. Fam. Lf .Ct.	2,013	1,188	1,186
VTD: Magnolia Heights	1,916	1,308	1,007
VTD: New Industrial Park	577	378	315
VTD: Ratliff Ferry	1,075	795	411
VTD: Sharon	855	553	455
VTD: Smith School	499	380	39
VTD: Tougaloo	605	584	581
VTD: Virlilia	532	369	173
Madison County Subtotal	29,080	19,996	13,985
Montgomery County	12,189	8,925	3,634
Panola County	34,274	24,193	10,547
Quitman County	10,117	6,880	4,396
Sharkey County	6,580	4,409	2,848
Sunflower County	34,369	24,775	16,416
Tallahatchie County	14,903	10,427	5,688
Tunica County	9,227	6,324	4,081
Warren County	49,644	35,476	14,219
Washington County	62,977	43,144	25,872
Yalobusha County	13,051	9,711	3,353
Yazoo County	28,149	20,136	9,894
District 2 Subtotal	**711,165**	**502,604**	**296,696**
District 3			
Adams County	34,340	25,149	12,370
Amite County	13,599	10,068	3,984

Chickasaw County	19,440	13,874	5,214
Clay County	21,979	15,643	8,157
Copiah County	28,757	21,014	9,976
Franklin County	8,448	6,142	1,990
Hinds County			
VTD: 76	2,526	1,891	479
VTD: 77	2,601	1,798	597
VTD: 91	3,212	2,090	1,651
VTD: 93	1,845	1,293	776
VTD: 96	2,828	2,143	716
VTD: 97	659	486	109
VTD: Byram 1	4,541	3,264	472
VTD: Byram 2	2,063	1,567	173
VTD: Clinton 1	4,406	3,713	549
VTD: Clinton 2	5,308	3,722	562
VTD: Clinton 3	4,439	3,352	744
VTD: Clinton 4	2,201	1,602	192
VTD: Clinton 5	1,590	1,231	60
VTD: Clinton 6	3,697	2,710	720
VTD: Dry Grove	1,076	798	222
VTD: Old Byram	2,665	1,975	173
VTD: Raymond 2	4,257	3,590	1,321
VTD: Spring Ridge	4,297	3,046	1,077
VTD: St Thomas	560	390	374
VTD: Terry	5,507	4,166	1,476
Hinds County Subtotal	**60,278**	**44,827**	**12,443**
Jasper County	18,149	13,077	6,400
Jefferson Davis County	13,962	9,998	5,292
Jones County			
VTD: Gitano	447	335	84
VTD: Hebron	1,201	838	543
VTD: Matthews	867	627	61

VTD: Soso	1,600	1,175	504
Jones County Subtotal	**4,115**	**2,975**	**1,192**
Kemper County	10,453	7,795	4,253
Lauderdale County	78,161	57,370	19,778
Lawrence County	13,258	9,635	2,872
Lincoln County	33,166	24,324	6,748
Lowndes County	61,586	43,963	16,599
Marion County			
VTD: Balls Mill	1,071	806	171
VTD: City Hall Beat 3	828	598	205
VTD: Courthouse Beat 4	1,324	1,018	126
VTD: Darbun	447	347	47
VTD: East Columbia			
BLK: 9504003077	29	22	19
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BLK: 9504003080	0	0	0
BLK: 9504003081	58	40	37
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BLK: 9505001006	6	6	0
BLK: 9505001007	13	11	3
BLK: 9505001008	19	15	0
BLK: 9505001009	6	4	4
BLK: 9505001010	0	0	0
BLK: 9505001011	5	4	0
BLK: 9505001012	0	0	0
BLK: 9505001013	5	3	0

BLK: 9505001014	36	18	12
BLK: 9505001015	12	8	8
BLK: 9505001016	9	6	0
BLK: 9505001017	43	23	23
BLK: 9505001018	13	9	0
BLK: 9505001019	20	18	0
BLK: 9505001020	9	7	0
BLK: 9505001021	5	5	0
BLK: 9505001048	0	0	0
BLK: 9505001049	13	10	0
BLK: 9505001997	0	0	0
BLK: 9505001998	0	0	0
BLK: 9505001999	0	0	0
BLK: 9505002000	19	13	1
BLK: 9505002001	4	3	0
BLK: 9505002002	0	0	0
BLK: 9505002003	0	0	0
BLK: 9505002004	22	18	12
BLK: 9505002005	5	5	0
BLK: 9505002006	10	9	7
BLK: 9505002007	2	2	0
BLK: 9505002008	0	0	0
BLK: 9505002009	13	10	0
BLK: 9505002010	50	35	0
BLK: 9505002011	74	54	35
BLK: 9505002030	47	39	6
BLK: 9505002033	0	0	0
BLK: 9505002034	0	0	0
BLK: 9505002035	11	9	0
BLK: 9505002036	3	3	0
BLK: 9505002037	23	18	0
BLK: 9505002038	5	5	0
BLK: 9505002039	2	2	2
BLK: 9505002040	0	0	0

BLK: 9505002041	4	2	2
BLK: 9505002042	23	21	9
BLK: 9505002043	56	43	25
BLK: 9505002044	0	0	0
BLK: 9505002045	0	0	0
BLK: 9505002046	0	0	0
BLK: 9505002047	26	22	22
BLK: 9505002048	0	0	0
BLK: 9505002049	4	3	3
BLK: 9505002050	15	14	14
BLK: 9505002051	2	2	0
BLK: 9505002052	0	0	0
BLK: 9505002053	2	2	2
BLK: 9505002054	132	92	85
BLK: 9505002055	209	134	134
BLK: 9505002056	5	1	1
BLK: 9505002057	0	0	0
BLK: 9505002058	33	24	24
BLK: 9505002059	95	60	52
BLK: 9505002060	14	8	8
BLK: 9505002061	20	12	12
BLK: 9505002062	16	12	12
BLK: 9505002063	15	10	10
BLK: 9505002064	46	29	29
BLK: 9505002065	34	19	19
BLK: 9505002066	52	27	25
BLK: 9505002067	0	0	0
BLK: 9505002068	144	60	54
BLK: 9505002069	28	16	14
BLK: 9505002070	42	19	19
BLK: 9505002071	11	9	9
BLK: 9505002072	58	41	28
BLK: 9505002073	0	0	0
BLK: 9505002074	0	0	0

BLK: 9505002075	109	63	61
BLK: 9505002076	0	0	0
BLK: 9505002077	0	0	0
BLK: 9505002078	62	40	39
BLK: 9505002079	0	0	0
BLK: 9505002080	13	8	4
BLK: 9505002081.	11	8	8
BLK: 9505002082	5	3	3
BLK: 9505002083	60	37	37
BLK: 9505002084	5	2	0
BLK: 9505002085	0	0	0
BLK: 9505002086	0	0	0
BLK: 9505002087	0	0	0
BLK: 9505002088	10	7	5
BLK: 9505002089	0	0	0
BLK: 9505002090	0	0	0
BLK: 9505002091	37	23	23
BLK: 9505002092	10	7	6
BLK: 9505002093	10	7	7
BLK: 9505002094	0	0	0
BLK: 9505002095	0	0	0
BLK: 9505002096	0	0	0
BLK: 9505002097	0	0	0
BLK: 9505002098	3	3	0
BLK: 9505002099	0	0	0
BLK: 9505002112	0	0	0
BLK: 9505002992	0	0	0
BLK: 9505002994	0	0	0
BLK: 9505002995	0	0	0
BLK: 9505002997	0	0	0
BLK: 9505002998	0	0	0
BLK: 9505002999	0	0	0

VTD East Columbia Subtotal	**2,015**	**1,327**	**986**
VTD: Foxworth	1,691	1,187	348
VTD: Goss	837	614	105
VTD: Hub	919	662	325
VTD: Jefferson Middle School	688	437	421
VTD: Kokomo	971	706	191
VTD: Morgantown	777	581	8
VTD: Pinebur	956	691	168
VTD: Pittman	933	681	11
VTD: Sandy Hook	535	408	108
VTD: South Columbia	860	713	571
VTD: Stovall	907	607	253
VTD: Union	440	329	14
VTD: White Bluff	139	96	2
Marion County Subtotal	**16,338**	**11,808**	**4,060**
Monroe County	38,014	27,673	7,795
Newton County	21,838	16,126	4,515
Noxubee County	12,548	8,697	5,774
Oktibbeha County			
VTD: Bell Schoolhouse	536	377	277
VTD: Center Grove	639	449	225
VTD: Central Starkville	3,375	2,529	1,313
VTD: East Starkville	3,586	3,316	736
VTD: Gillespie Street Center	3,132	2,340	657
VTD: Hickory Grove	2,644	2,140	872
VTD: North Starkville	3,491	2,727	890
VTD: Northeast Starkville	2,967	2,795	865
VTD: Oktoc	1,301	915	669

VTD: Osborn	1,805	1,243	881
VTD: Sessums	1,562	1,063	732
Oktibbeha County Subtotal	**25,038**	**19,894**	**8,117**
Pike County	38,940	28,154	12,385
Rankin County			
VTD: Clear Branch	1,574	1,159	175
VTD: Cleary	1,564	1,226	42
VTD: East Steens Creek	2,584	1,889	339
VTD: Monterey	3,285	2,344	518
VTD: Mountain Creek	546	389	69
VTD: South Pearson	1,466	1,043	382
VTD: South Richland	4,187	2,976	216
VTD: Springhill	3,286	2,274	810
VTD: West Brandon	6,432	4,537	1,057
VTD: West Steens Creek	4,364	3,061	332
VTD: Whitfield	4,563	4,319	2,683
Rankin County Subtotal	**33,851**	**25,217**	**6,623**
Scott County			
VTD: Harperville	1,851	1,313	662
VTD: High Hill	629	448	225
VTD: Hillsboro	1,394	914	520
VTD: Homewood	550	416	90
VTD: Lake	640	448	210
VTD: Langs Mill	1,433	1,053	326
VTD: North Forest	2,586	1,724	1,127
VTD: Northeast Forest	946	723	71
VTD: Northwest Forest	694	526	60
VTD: Salem	1,184	795	401
VTD: Sebastapol	913	664	50
VTD: South Forest	3,112	2,240	991
VTD: Steele	1,273	889	516

VTD: Usry	714	491	59
Scott County Subtotal	**17,919**	**12,644**	**5,308**
Simpson County	27,639	19,920	6,138
Smith County	16,182	11,731	2,367
Walthall County	15,156	10,853	4,266
Wilkinson County	10,312	7,648	5,014
Winston County			
VTD: American Legion	1,989	1,338	1,063
VTD: Bethany	242	186	21
VTD: Betheden-Loakfoma	363	278	89
VTD: Bond	915	673	166
VTD: County Agent	1,794	1,190	945
VTD: Crystal Ridge	385	287	65
VTD: Dean Park	404	269	239
VTD: E.M.E.P.A.	1,357	1,007	269
VTD: Elementary School	834	610	288
VTD: Ellison Ridge	436	343	76
VTD: Fairground	2,044	1,583	586
VTD: Gum Branch	134	103	12
VTD: Louisville Electric	224	158	40
VTD: Louisville High School	429	305	68
VTD: Lovorn Tractor	297	244	16
VTD: Nanih Waiya	1,378	1,005	170
VTD: Nanih Waiya-Handle	573	410	88
VTD: New Hope	271	222	13
VTD: Noxapater	1,618	1,200	344
VTD: Old National Guard Armory	904	750	61
VTD: Sinai	369	276	147
VTD: Zion Ridge			
BLK: 9502001011	0	0	0
BLK: 9502001013	9	9	4
BLK: 9502001016	7	6	0

BLK: 9502001017	212	150	146
BLK: 9502001018	0	0	0
BLK: 9502001019	34	20	16
BLK: 9502001020	0	0	0
BLK: 9502001021	0	0	0
BLK: 9502001022	0	0	0
BLK: 9502001023	0	0	0
BLK: 9502001024	46	28	10
BLK: 9502001026	71	47	46
BLK: 9502001028	16	11	11
BLK: 9502001034	0	0	0
BLK: 9502001035	4	2	2
BLK: 9502001036	112	70	70
BLK: 9502001037	1	1	0
BLK: 9502001038	11	5	5
BLK: 9502001044	4	3	3
BLK: 9502001045	40	29	29
BLK: 9502001046	37	24	22
BLK: 9502001047	50	29	28
BLK: 9502001048	0	0	0
BLK: 9502001049	45	32	11
BLK: 9502001050	28	21	21
BLK: 9502001051	0	0	0
BLK: 9502001064	11	9	9
BLK: 9502001065	0	0	0
BLK: 9502001998	0	0	0
BLK: 9502001999	0	0	0
VTD Zion Ridge Subtotal	**738**	**496**	**433**
Winston County Subtotal	**17,698**	**12,933**	**5,199**
District 3 Subtotal	**711,164**	**519,152**	**194,829**

District 4

Clarke County	17,955	13,147	4,193
Covington County	19,407	13,813	4,372
Forrest County	72,604	54,801	16,479
George County	19,144	13,560	1,080
Greene County	13,299	10,088	2,778
Hancock County	42,967	32,163	2,026
Harrison County	189,601	140,213	27,051
Jackson County	131,420	95,072	181,112
Jones County			
VTD: Anthonys Florist	927	582	415
VTD: Antioch	753	595	0
VTD: Blackwell	135	93	3
VTD: Bruce	559	449	14
VTD: Calhoun	3,275	2,525	47
VTD: Cameron Center	709	515	131
VTD: Centerville	475	354	2
VTD: Cooks Ave. Comm Ctr.	824	582	568
VTD: County Barn	1,861	1,498	317
VTD: Currie	270	185	169
VTD: Ellisville Court House	1,507	1,216	256
VTD: Erata	642	485	233
VTD: Glade School	1,894	1,451	23
VTD: Johnson	1,001	706	4
VTD: Lamar School	1,768	1,292	358
VTD: Landrum Comm. Ctr.	740	570	2
VTD: Laurel Courthouse	1,771	1,291	358
VTD: Maple Street YWCA	472	329	304
VTD: Mason School	2,078	1,668	39
VTD: Moselle	1,757	1,311	186
VTD: Myrick	1,716	1,275	8

VTD: National Guard Armory	2,353	1,606	1,159
VTD: Nora Davis School	1,790	1,293	1,146
VTD: Oak Park School	1,859	1,153	1,125
VTD: Old Health Dept.	499	307	271
VTD: Ovett	1,301	954	12
VTD: Pendorf	646	493	14
VTD: Pinegrove	1,510	1,168	84
VTD: Pleasant Ridge	892	694	5
VTD: Powers Comm. Ctr.	1,633	1,187	237
VTD: Rainey	1,581	1,185	1
VTD: Roosevelt	601	427	323
VTD: Rustin	1,148	855	1
VTD: Sandersville Civic Center	1,386	1,042	92
VTD: Sandhill	924	716	1
VTD: Shady Grove	4,332	3,150	573
VTD: Sharon	3,508	2,604	376
VTD: Shelton	1,116	843	180
VTD: South Jones	1,357	1,047	191
VTD: Stainton	1,882	1,445	646
VTD: Tuckers	1,642	1,223	33
VTD: Twenty-Sixth St. Fire Stn	803	655	76
VTD: Union	1,279	942	28
VTD: West Jones	1,667	1,262	240
Jones County Subtotal	**60,843**	**45,223**	**10,069**
Lamar County	39,070	28,134	3,262
Marion County			
VTD: Broom	831	590	202
VTD: Carley	1,389	1,016	129
VTD: Cedar Grove	820	573	167

VTD: East Columbia			
BLK: 9505002029	47	34	1
BLK: 9505002031	6	5	5
BLK: 9505002032	39	24	3
VTD East Columbia Subtotal	**92**	**63**	**9**
VTD: Morris	1,545	1,129	308
VTD: National Guard Beat 1	2,666	1,866	117
VTD: Popetown Beat 2	1,914	1,434	304
Marion County Subtotal	**9,257**	**6,671**	**1,236**
Pearl River County	48,621	35,515	3,961
Perry County	12,138	8,655	1,697
Stone County	13,622	9,966	1,779
Wayne County	21,216	15,014	5,131
District 4 Subtotal	**711,164**	**522,035**	**103,226**
State Totals	**2,844,658**	**2,069,471**	**688,994**

APPENDIX K

IN THE CHANCERY COURT OF THE
FIRST JUDICIAL DISTRICT OF HINDS COUNTY,
MISSISSIPPI

BEATRICE BRANCH; RIMS BARBER;
L. C. DORSEY; DAVID RULE; MELVIN
MORTON; JAMES WOODARD; JOSEPH
P. HUDSON; AND ROBERT NORVEL — PLAINTIFFS

vs. — No. G-2001-1777 W/4

ERIC CLARK, Secretary of State
of Mississippi; MIKE MOORE, Attorney General
of Mississippi; RONNIE MUSGROVE,
Governor of Mississippi — DEFENDANTS

(Filed Dec. 13, 2001)

ORDER

The Mississippi Republican Executive Committee has filed a Motion to Dismiss, for More Definite Statement, and for Relief from Prior Orders. In a cover letter to the Court, its attorney references the December 6 order granting the state defendants' motion to add parties and the subsequent December 7 order reconsidering that December 6 order. The Committee's attorney states that he presumes the December 7 order vacates the December 6 order, but that he is filing these motions out of an abundance of caution.

The state defendants filed a motion on December 6 to join the Mississippi Republican Executive Committee and the Mississippi Democratic Executive Committee as parties. This

came one day after the federal court's December 5 order. On December 6, this Court issued a new scheduling order containing an expedited schedule and a December 14 trial date in light of the federal court order. This Court also granted on December 6 the state defendants' motion to join the executive committees. Upon reconsideration *sua sponte*, the Court vacated that order on December 7, stating that the involuntary joinder of additional parties "would not serve the interests of the state authorities to proceed expeditiously." The plaintiffs have argued that the Republican and Democratic executive committees are not necessary and indispensable parties for any purpose, including the purpose of granting relief, citing *Connor v. Finch*, 469 F. Supp. 693, 694 (S.D. Miss. 1979).

For the reasons stated in the plaintiffs' argument, and for the reasons set forth in this Court's order of reconsideration dated December 7, the Court believes that the party executive committees are not indispensable parties. By virtue of the federal court's December 5 order, the case in this Court must proceed expeditiously. Adding involuntary parties at the state defendant's request at this stage of the case could impair the effort to proceed expeditiously, particularly if those parties object to going forward under the existing schedule.

The order of December 6 is vacated, and the political parties are not involuntarily joined in this case. Neither party executive committee has moved to intervene, and the Republican Executive Committee has specifically stated that it chooses not to intervene on a voluntary basis. As suggested in prior orders of the Court, and as stated again at the hearing held on December 11, they are free to intervene and voluntarily participate at any time if they so choose. Of course, they will be required to participate in accordance with the existing scheduling order. Of course, they will be required to

participate in accordance with the existing scheduling order. All they need to do is file an appearance and a notice with the Court.

Accordingly, the order of December 6 stands vacated. The motions of the Mississippi Republican Executive Committee are dismissed as moot.

This 13th day of December, 2001.

/s/ Patricia D. Wise
CHANCELLOR

Submitted by:

/s/ Carlton W. Reeves
Plaintiff's Co-Counsel

APPENDIX L

IN THE CHANCERY COURT OF THE
FIRST JUDICIAL DISTRICT OF HINDS COUNTY,
MISSISSIPPI

BEATRICE BRANCH; RIMS BARBER; L. C. DORSEY; DAVID RULE; MELVIN MORTON; JAME WOODARD; JOSEPH P. HUDSON; AND ROBERT NORVEL — PLAINTIFFS

vs. — No. G-2001-1777 W/4

ERIC CLARK, Secretary of State of Mississippi; MIKE MOORE, Attorney General of Mississippi; RONNIE MUSGROVE, Governor of Mississippi — DEFENDANTS

(Filed Dec. 13, 2001)

ORDER

The intervenors have moved to amend the scheduling order which sets trial for December 14. The Court's prior scheduling order, entered December 3, set trial for January 14. However, because of the concerns stated in the December 5, 2001 order of the federal court, this Court altered the scheduling order and set trial for December 14.

The intervenors filed their motion to intervene on November 13. At a hearing that same day, the plaintiffs and state defendants both stated that they did not object to the motion. The motion was granted orally and later was memorialized in writing on November 19. On November 13, the plaintiffs also presented this Court with a proposed

scheduling order asking that trial be set for December 4. Although the Court did not adopt that proposal, all parties have been on notice that the proceedings would be expedited. The parties have been free to seek discovery and to move to shorten the time for discovery responses, although no such motion has been filed.

The December 3 order gave the parties over 40 days notice of the January 14 trial. It was only because of the December 5 federal court order that this Court felt it necessary on December 6 to move the trial up to December 14.

For these reasons, and for those set forth in the argument and response of the plaintiffs, the motion to amend the scheduling order is denied.

This 13th day of December, 2001.

/s/ Patricia D. Wise
CHANCELLOR

Submitted by:

/s/ Carlton W. Reeves
Plaintiff's Co-Counsel

APPENDIX M

IN THE CHANCERY COURT OF THE
FIRST JUDICIAL DISTRICT OF HINDS COUNTY,
MISSISSIPPI

BEATRICE BRANCH; RIMS BARBER; L. C. DORSEY; DAVID RULE; MELVIN MORTON; JAMES WOODARD; JOSEPH P. HUDSON; AND ROBERT NORVEL — PLAINTIFFS

vs. — No. G-2001-1777 W/4

ERIC CLARK, Secretary of State of Mississippi; MIKE MOORE, Attorney General of Mississippi; RONNIE MUSGROVE, Governor of Mississippi — DEFENDANTS

(Filed Dec. 13, 2001)

ORDER

The intervenors have moved to dismiss this case and have supplemented that motion. The plaintiffs have filed multiple briefs in response to the motion and the supplement. After considering the motion, the briefs, and the oral argument held December 11, 2001, the motion to dismiss is hereby denied for the reasons set forth in the plaintiffs' responses, as well as for the reasons set forth in this Court's December 3 order denying the state defendants' motion to dismiss.

This 13th day of December, 2001.

/s/ Patricia D. Wise
CHANCELLOR

Submitted by:

/s/ Carlton W. Reeves
Plaintiff's Co-Counsel

APPENDIX N

IN THE CHANCERY COURT OF THE FIRST JUDICIAL DISTRICT
OF HINDS COUNTY, MISSISSIPPI

BEATRICE BRANCH; RIMS BARBER; L.C. DORSEY; DAVID RULE; MELVIN HORTON; JAMES WOODARD; JOSEPH P. HUDSON; and ROBERT NORVEL — PLAINTIFFS

V. — Cause No. G-2001-1777 W/4

ERIC CLARK, Secretary of State of Mississippi; MIKE MOORE, Attorney General of Mississippi; RONNIE MUSGROVE, Governor of Mississippi — DEFENDANTS

(Filed Dec. 7, 2001)

AMENDED SCHEDULING ORDER

On December 3, 2001, this Court issued a scheduling order setting trial in this matter for January 14, 2002. On December 5, a three-judge panel of the United States District Court for the Southern District of Mississippi issued an order stating that "if it is not clear to this Court by January 7, 2002 that the State authorities can have a redistricting plan in place by March 1, we will assert our jurisdiction and proceed expeditiously to rule on the Plaintiffs' Motion for Preliminary Congressional Districts." *Smith v. Clark*, No. 3:01-CV-855WS (S.D. Miss. Order of Dec. 5, 2000). Although this Court believes that the December 3 scheduling order set out a reasonable time frame, it is useful to avoid a situation where the federal and state

courts are involved in the process of adopting redistricting plans at the same time. Therefore, the Court finds and orders that the parties comply with the following scheduling order which supersedes the orders of December 3 and 6, 2001:

1. All motions to add parties and motions to intervene and/or appear *amicus curiae* shall be filed by December 10, 2001.

2. A hearing will be held on December 11, 2001 at 2:30 p.m. before the Honorable Patricia D. Wise to consider any such motions, as well as any other matters raised by the parties. All parties are required to attend unless specifically excused by the Court.

3. All experts will be designated no later than 12:00 p.m. on December 13, 2001.

4. Given the nature of this litigation and after having considered Rule 26 of the Mississippi Rules of Civil Procedure, all parties are encouraged to fully and expeditiously cooperate in discovery. All discovery shall be completed by December 13, 2001 at 1:00 p.m.

5. All proposed redistricting plans should be filed and exchanged by the parties and any *amicus curiae* no later that 12:00 p.m., December 13, 2001. In addition, the parties shall file and exchange a proposed list of witnesses and exhibits no later than 12:00 p.m. on December 13, 2001.

6. A pretrial status conference will be held on December 13, 2001 at 2:30 p.m. before the Honorable Patricia D. Wise. All parties are required to attend.

7. Trial of this matter shall take place on December 14, 2001 beginning at 9:30 a.m., Saturday, December 15, 2001, December 17, 18, 19, 2001.

8. The parties shall submit position papers and briefs for consideration no later than 11:00 a.m. on December 20, 2001.

9. The Court will attempt to adopt a plan no later than December 21, 2001 so that the State's chief legal officer can submit it for preclearance no later than December 28, 2001, and sooner if possible. All parties shall cooperate in assisting the State's chief legal officer so that the preclearance obligation can be fulfilled in a prompt and timely manner.

10. Copies of all pleadings, the proposed plans, and the lists of witnesses and exhibits shall be served on all parties by hand if possible, and if not by hand, by facsimile as well as by mail.

SO ORDERED AND ADJUDGED, this 7th day of December, 2001.

/s/ Patricia D. Wise
CHANCELLOR

APPENDIX O

IN THE CHANCERY COURT OF THE FIRST JUDICIAL DISTRICT OF HINDS COUNTY, MISSISSIPPI

BEATRICE BRANCH; RIMS BARBER; L.C. DORSEY; DAVID RULE; MELVIN HORTON; JAMES WOODARD; JOSEPH P. HUDSON; and ROBERT NORVEL — PLAINTIFFS

V.

Cause No. G-2001-1777 W/4

ERIC CLARK, Secretary of State of Mississippi; MIKE MOORE, Attorney General of Mississippi; RONNIE MUSGROVE, Governor of Mississippi — DEFENDANTS

(Filed Dec. 7, 2001)

ORDER OF RECONSIDERATION AND OPINION REGARDING THE MOTION TO JOIN INDISPENSABLE PARTIES

COMES NOW, the Court *sua sponte* to reconsider its Order of December 6, 2001, granting the State Defendants' Motion to Add Indispensable Parties pursuant to Rules 19 and 20 of the Mississippi Rules of Civil Procedure. After the Court's reconsideration, the Court is of the opinion that any additional parties involuntarily joined herein who choose not to submit themselves to the Court's jurisdiction which includes voluntary participation in the Court's Scheduling Order dated December 7, 2001 would not serve the interest of the state authorities to proceed expeditiously.

Pursuant to Rule 19 of the Mississippi Rules of Civil Procedure, this Court must first determine whether joinder of the State Republican Executive Committee and the State Democratic Executive Committee are feasible. There are four factors that the Court must consider. Initially, the Court must determine the Plaintiff's interest in having a forum. This Court reiterates that the Defendants argue that it is primarily the responsibility of the legislature to draw redistricting plans. However, where the legislative fails to act, the courts will act, thus giving the Plaintiffs a forum. The Plaintiffs' interest in having their grievances heard is recognized and respected by this Court.

The second issue this Court must consider is the Defendants' wish to avoid multiple litigation, inconsistent relief, or sole responsibility for a liability shared with others. The federal court has allowed the state authorities to make clear that it will timely carry out their duty. When the Court meets that deadline enumerated by the federal court Order dated December 5, 2001, the Defendants fear of multiple litigation or inconsistent relief is absolved. Furthermore, the sole responsibility for enforcing election laws in the State of Mississippi belong to the present State Defendants, the Governor, Secretary of State, and Attorney General of the State of Mississippi.

Third, the Court must consider the interest of an outsider whom it would have been desirable to join. The State Defendants moved this Court to join the State Democratic Executive Committee and the State Republican Executive Committee. The Court notes as a general proposition that the purpose of redistricting is not to satisfy the fancy of any political party or candidate. The purpose of redistricting is to ensure that the electorate enjoys orderly, timely, and efficient

elections without the flux of delays, date changes, and continuances as outlined in the federal court's opinion dated December 5, 2001.

Last, the Court must consider the interests of the courts and the electorate in complete, consistent, and efficient settlement of controversies. The Court recognizes a strong interest in ensuring that all election laws of the State of Mississippi are followed in a timely fashion. The Court also notes the interest of the electorate in avoiding voter and candidate confusion that accompanies an untimely filed redistricting plan.

Therefore, after reviewing the factors enumerated pursuant to Mississippi Rule of Civil Procedure 19(a), this Court hereby finds that the State Democratic Executive Committee and the State Republican Executive Committee cannot be feasibly joined as indispensable parties to this action.

This Court must also determine whether in equity and good conscience this action should proceed among the parties before it. There are four factors that the Court must consider: (1) to what extent a judgment rendered in the parties' absence might be prejudicial to the party or those already parties; (2) the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudicial effect can be lessened or avoided; (3) whether a judgment rendered in the parties' absence will be adequate; and (4) whether the Plaintiff will have an adequate remedy if the action is dismissed for nonjoinder. Considering the rationale from the above analysis, this Court hereby finds and adjudges that this action should in equity and good conscience proceed among the parties before it.

SO ORDERED AND ADJUDGED, this the 7th day of December, 2001.

/s/ Patricia D. Wise
CHANCELLOR

APPENDIX P

IN THE CHANCERY COURT OF THE
FIRST JUDICIAL DISTRICT OF HINDS COUNTY,
MISSISSIPPI

BEATRICE BRANCH; RIMS BARBER;
L.C. DORSEY; DAVID RULE; MELVIN HORTON;
JAMES WOODARD; JOSEPH P. HUDSON; and
ROBERT NORVEL PLAINTIFFS

V. No. G-2001-1777 W/4

ERIC CLARK, Secretary of State of
Mississippi; MIKE MOORE, Attorney General
of Mississippi; RONNIE MUSGROVE, Governor
of Mississippi DEFENDANTS

(Filed Dec. 7, 2001)

SCHEDULING ORDER

On December 3, 2001, this Court issued a scheduling order setting trial in this matter for January 14, 2002. On December 5, a three-judge panel of the United States District Court for the Southern District of Mississippi issued an order stating that it "if it is not clear to this Court by January 7, 2002 that the State authorities can have a redistricting plan in place by March 1, we will assert our jurisdiction and proceed expeditiously to rule on the Plaintiffs' Motion for Preliminary Injunction, and if necessary, we will draft and implement a plan for reapportioning the state congressional districts." Smith v. Clark, No. 3:01-CV-855WS (S.D. Miss., Order of Dec. 5, 2001). Although this Court believes that the December 3

scheduling order set out a reasonable time frame, it is useful to avoid a situation where the federal and state courts are involved in the process of adopting redistricting plans at the same time. In light of the order entered by the federal court and the arguments of counsel, it is appropriate to revise the scheduling order entered on December 3, 2001. Therefore, the Court finds and orders that the parties comply with the following scheduling order, which supersedes the order of December 3, 2001.

1. All motions to add parties and motions to intervene and/or appear *amicus curiae* shall be filed by December 10, 2001.

2. A hearing will be held on December 11, 2001 at 2:30 PM before the Honorable Patricia D. Wise to consider any such motions, as well as any other matters raised by the parties.

3. All experts shall be designated no later than noon on December 13, 2001.

4. All proposed redistricting plans should be filed and exchanged by the parties and any *amicus curiae* no later than noon on December 13, 2001. In addition, the parties shall file and exchange a proposed list of witnesses and exhibits no later than noon on December 13, 2001.

5. A pretrial status conference will be held on December 13, 2001 at 2:30 P.M. before the Honorable Patricia D. Wise.

6. Trial of this matter will begin on December 14, 2001 at 9:30 AM. Trial will continue on Saturday, December 15, at 9:30 AM. It will resume on December 17, 2001 at 9:30 AM, and will last, if necessary, through December 19.

7. The parties will submit position papers and briefs for the Court's consideration no later than 11:00 A.M. on December 20, 2001.

8. The Court will attempt to adopt a plan by December 21, 2001, and if not then, no later than December 24, 2001, so that the State's chief legal officer can submit it for preclearance as promptly as possible. All parties shall cooperate in assisting the State's chief legal officer so that the preclearance obligation can be fulfilled in a prompt manner.

9. Copies of all pleadings, the proposed plans, and the lists of witnesses and exhibits shall be served on all parties by hand if possible, and if not by hand, by fax as well as by mail.

SO ORDERED ADJUDGED,

This the 6th day of December, 2001.

/s/ Patricia D. Wise
CHANCELLOR

APPENDIX Q

IN THE CHANCERY COURT OF THE FIRST JUDICIAL DISTRICT
HINDS COUNTY, MISSISSIPPI

BEATRICE BRANCH; RIMS BARBER; L.C. DORSEY; DAVID RULE; MELVIN HORTON; JAMES WOODARD; JOSEPH P. HUDSON; and ROBERT NORVEL — PLAINTIFFS

V. — Cause No. G-2001-1777 W/4

ERIC CLARK, Secretary of State of Mississippi; MIKE MOORE, Attorney General of Mississippi; RONNIE MUSGROVE, Governor of Mississippi — DEFENDANTS

(Filed Dec. 6, 2001)

ORDER

The Court having considered the State Defendants' Motion to Add Indispensable Parties Under Rules 19 and 20, and the Court being of the opinion that the motion is well taken and should be granted. It is hereby

ORDERED that the Mississippi Democratic Executive Committee and the Mississippi Republican Executive Committee be, and hereby are, joined as parties in this action. Said parties shall forthwith and immediately be served with copies of this order.

SO ORDERED this the 6th day of December, 2001.

/s/ Patricia D. Wise
CHANCELLOR

APPENDIX R

IN THE CHANCERY COURT OF THE
FIRST JUDICIAL DISTRICT OF HINDS COUNTY,
MISSISSIPPI

BEATRICE BRANCH; RIMS BARBER;
L.C. DORSEY; DAVID RULE; MELVIN HORTON;
JAMES WOODARD; JOSEPH P. HUDSON; and
ROBERT NORVEL PLAINTIFFS

V. No. G-2001-1777 W/4

ERIC CLARK, Secretary of State of
Mississippi; MIKE MOORE, Attorney General
of Mississippi; RONNIE MUSGROVE, Governor
of Mississippi DEFENDANTS

(Filed Dec. 3, 2001)

SCHEDULING ORDER

COMES NOW this Court and finds and orders that the parties comply with the following scheduling order:

1. A status conference shall be held on December 6, 2001, at 2:30 p.m. at the Chancery Courthouse before the Honorable Patricia D. Wise. All parties are required to attend.

2. All motions to add parties and motions to intervene and/or appear *amicus curiae* shall be filed by December 10, 2001.

3. All written discovery shall be propounded and served no

later than December 11, 2001.

4. All written discovery shall be served and any depositions shall be taken no later than December 31, 2001.

5. All experts shall be designated on or before January 7, 2001.

6. All proposed redistricting plans should be filed and exchanged by the parties and any *amicus curiae* no later than January 7, 2001. In addition, the parties shall file and exchange a proposed list of witnesses and exhibits no later than January 7, 2001. Copies of all pleadings, the proposed plans, and the lists of all witnesses and exhibits shall be served on all parties by hand or facsimile, as well as by mail on or before January 7, 2001.

7. A status conference will be held on January 9, 2002 at 10:30 a.m. at the Chancery Courthouse before the Honoroable Patricia D. Wise. All parties are required to attend.

8. Trial of this matter shall take place on January 14, 2002 beginning at 9:30 a.m. The trial shall not last more than seven (7) week days. However, the Court may conduct trial on Saturday, January 19, 2002 at its discretion.

9. All parties shall submit position papers and briefs for the Court's consideration no later than Friday, January 25, 2002.

SO ORDERED AND ADJUDGED.

THIS, the 3rd day of December, 2001.

/s/ Patricia D. Wise
CHANCELLOR

APPENDIX S

IN THE CHANCERY COURT OF THE
FIRST JUDICIAL DISTRICT OF HINDS COUNTY,
MISSISSIPPI

BEATRICE BRANCH; RIMS BARBER;
L.C. DORSEY; DAVID RULE; MELVIN HORTON;
JAMES WOODARD; JOSEPH P. HUDSON; and
ROBERT NORVEL PLAINTIFFS

V. No. G-2001-1777 W/4

ERIC CLARK, Secretary of State of
Mississippi; MIKE MOORE, Attorney General
of Mississippi; RONNIE MUSGROVE, Governor
of Mississippi DEFENDANTS

(Filed Dec. 3, 2001)

ORDER

This matter came before the Court on Defendants' Supplemental Motion to Dismiss the Amended Complaint, to Reconsider, and Application for Relief Pursuant to M. R. App P. Rule 21 to reconsider the Court's Order of November 19, 2001. The Court, having read the briefs on file, having heard oral arguments on said motion on November 19, 2001, and being fully advised of all premises, hereby finds and orders as follows:

The Defendants have requested that this Court reconsider its Order denying the Defendants' initial Motion to Dismiss on the issue of ripeness. The Court hereby finds that the

Defendants failed to present new arguments regarding the issue of ripeness in their supplemental motion to dismiss. The Court's prior ruling on the issue of ripeness is outlined in the Court's Order dated November 19, 2001. The Court hereby incorporates said Order by reference herein. Accordingly, the Defendants' Motion for Reconsideration of their Motion to Dismiss on the issue of ripeness is hereby denied.

Alternatively, the Defendants have moved this Court to reconsider its ruling on the Defendants' motion to dismiss on the issue of improper parties. The Defendants argue that the named defendants are not proper parties to this action. The Court notes that the Honorable Mike Moore, Attorney General of the State of Mississippi, first made this argument before the Court on November 19, 2001. The named Defendants, the Governor, the Secretary of State, and the Attorney General of the State of Mississippi as named in their official capacities, are members of the State Board of Election Commissioners and are charged with the duty of enforcing election laws. The Court notes and adopts this procedure based upon cases, including, but not limited to, *Conner v. Johnson*, 256 F. Supp. 962 (S.D. Miss. 1966); *Jordan v. Winter*, 541 F. Supp. 1135 (N.D. Miss. 1982); *Martin v. Allain*, 658 F. Supp. 1183 (S.D. Miss. 1987); *Watkins v. Mabus*, 771 F. Supp. 789 (S.D. Miss. 1991); and *NAACP v. Fordice*, 252 F.3d 361 (5th Cir. 2001).

This Court further notes that assuming *arguendo*, that the named Defendants are not the proper parties, the Court finds that under the circumstances, a dismissal based upon an alleged failure to name the proper parties is not an appropriate remedy to a proposed procedural defect. The Court finds that any party may motion this Court to include additional parties and leave shall be freely granted. This Court orders and adjudges that the Defendants' motion to dismiss based upon an improperly

named Defendants is hereby denied.

The Court finds that the Defendants also moved this Court to reconsider its denial of Defendants' Motion to dismiss on the issue of jurisdiction. The Defendants argue that this Court does not have subject matter jurisdiction to hear matters presented in Plaintiffs' Amended Complaint. The Defendants argue that this matter is primarily one for the Mississippi State Legislature. However, when the legislature fails to act in a timely manner to adopt a re-districting plan, it is the duty of the Court to adopt a plan. The chancery court is a court of equity. *Miss. Const., Art. 6, Sec. 159.* The Court notes that the Plaintiffs have requested equitable relief in their Amended Complaint. While the Defendants argue that the chancery court has no subject matter jurisdiction with regard to electoral process, this Court finds that the Mississippi Supreme Court has not prohibited the chancery court from hearing cases involving electoral matters. (*See e.g. Adams County Election Commission v. Sanders*, 586 So. 2d 829 (Miss. 1991). In fact the Mississippi Supreme Court has affirmed a chancery court's opinion involving the electoral process, specifically stating, "[w]e think the lower court acted properly and within the applicable statutes and law in entering [that] final decree. *Carter v. Luke*, 399 So. 2d 1356, 1358 (Miss. 1981). This Court further notes that the United Supreme Court has indicated that "state courts have a significant role in redistricting . . . and the power of the state judiciary of a State to require a valid redistricting plan . . . has been specifically encouraged. *Growe v. Emison*, 507 U.S. 25, 33 (1993). Therefore, the Defendants' Motion to Dismiss on the issue of subject matter jurisdiction is hereby denied.

The Defendants have failed to cite specific relief requested pursuant to M. R. App. P. Rule 21, and the same is hereby

denied.

The Court finds and orders that the Defendants' Supplemental Motion to Dismiss the Amended Complaint, to Reconsider, and Application for Relief Pursuant to M. R. App. P. Rule 21 is not well taken and is hereby denied.

SO ORDERED AND ADJUDGED, this 3rd day of December, 2001.

/s/ Patricia D. Wise
CHANCELLOR

APPENDIX T

IN THE CHANCERY COURT OF THE
FIRST JUDICIAL DISTRICT OF HINDS COUNTY,
MISSISSIPPI

BEATRICE BRANCH; RIMS BARBER;
L.C. DORSEY; DAVID RULE; MELVIN HORTON;
JAMES WOODARD; JOSEPH P. HUDSON; and
ROBERT NORVEL PLAINTIFFS

V. No. G-2001-1777 W/4

ERIC CLARK, Secretary of State of
Mississippi; MIKE MOORE, Attorney General
of Mississippi; RONNIE MUSGROVE, Governor
of Mississippi DEFENDANTS

(Filed Nov. 19, 2001)

ORDER

The defendants have moved to dismiss the Complaint as premature and unripe. Oral argument on the motion was held on November 13, 2001. The Court is of the opinion that the defendants' motion should be denied. The Court agrees with and adopts the arguments of plaintiff as set forth below.

Although a special session of the Mississippi Legislature recently was convened for the purpose of adopting a congressional plan that the state, no plan was enacted and the legislature adjourned. The plaintiffs have filed this action asking this Court to grant injunctive relief by adopting and ordering the implementation of a lawful redistricting plan if the

legislature fails to do so in a timely manner.

The legislature still has time to enact a plan and hopefully will do so. But in the event no plan is enacted in a timely fashion, it will be appropriate for this Court to enforce the law by adopting and implementing a plan. As the plaintiffs pointed out during oral argument, they have invoked the jurisdiction of this Court sitting as a court of equity in Hinds County, which is the seat of government of the State of Mississippi. The United States Supreme Court has said that "state courts have a significant role in redistricting," *Growe v. Emison*, 507 U.S. 25, 33 (1993), and also has said: "The power of the judiciary of a State to require valid reapportionment or to require a valid redistricting plan has not only been recognized by this Court, but . . . has been specifically encouraged." *Id., quoting, Scott v. Germano*, 381 U.S. 407, 409 (1965).

A separate lawsuit seeking implementation of a new congressional redistricting plan has been filed in federal court. *Smith v. Clark*, No. 3:01cv855WS (S.D. Miss.). But the existence of that lawsuit does not relieve the state courts of Mississippi of their obligation to act in the event of a legislative default once their jurisdiction is invoked by a lawsuit such as this one. As the United States Supreme Court has explained:

> In the reapportionment context, the Court has required federal judges to defer consideration of disputes involving redistricting where the State, through its legislative or judicial branch, has begun to address that highly political task itself.

Growe v. Emison, 507 U.S. at 33 (emphasis in original).

The defendants contend that the legislature still has time to

enact a plan, and they urge that this case be dismissed without prejudice, subject to refiling at some later date if the legislature remains at an impasse. Hopefully, the legislature will act, and will act soon. But it would be irresponsible to dismiss this case at this time. In light of the legislature's recent failure to pass a plan during the special session, this Court must be ready to act promptly in the event the stalemate continues.

The qualifying deadline for Congressional candidates is March 1, 2001. Miss. Code Ann. § 23-15-297(g); 23-15 299(3). The first primary will be held on June 4, 2001. *Id.*, § 23-15-1031. Any congressional redistricting plan for Mississippi, whether adopted by the legislature or this Court, must be submitted for preclearance under Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c. *Hathorn v. Lovorn*, 457 U.S. 255, 265 & n.16 (1982). Although the legislature still has an opportunity to enact a plan, time is running out.

The complaint in the present case has been filed and served on the defendants. A motion to intervene by separate parties has been filed and was granted orally on November 13, 2001, with a written order to follow. A conference of the parties will be held shortly to determine a course of pretrial proceedings so that this Court will be ready to go forward on the merits if the legislature does not enact a plan in the near future. Dismissal would not only require the parties and this Court to retrace these steps at some time in the future, but would prevent the parties and the Court from taking any additional steps to insure that the Court is prepared in the event the legislative impasse remains unresolved.

The adjournment of the special legislative session without passage of a plan, as well as the approaching deadlines, make this case ripe. The Court respectfully urges the legislature and

the Governor to renew their efforts to enact and implement a congressional redistricting plan, and to do so as soon as possible. In the event a plan is not adopted, the courts of the State of Mississippi must be ready to fulfill their obligation to insure that a lawful redistricting plan is implemented in a timely fashion.

Accordingly, the motion to dismiss is DENIED. A status conference will be held at 11:00 AM on Monday, November 19, 2001.

This 19th day of November, 2001.

/s/ Patricia D. Wise
CHANCERY COURT JUDGE

APPENDIX U

U.S. Department of Justice
Civil Rights Division

Washington, D.C. 20530

February 14, 2002

VIA FACSIMILE (601-359-3441)
& FIRST CLASS MAIL

The Honorable Michael Moore
Attorney General
Department of Justice
State of Mississippi
P.O. Box 220
Jackson, MS 39205-0220

Dear Mr. Attorney General:

This refers to the submitted changes for Mississippi's Congressional redistricting plan, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. Pursuant to the submission, the changes made are the following:

(a) Implementing a congressional redistricting plan drawn by the Chancery Court of the First Judicial District of Hinds County;

(b) Implementing a change in state law that allows a Chancery Court to draw a state-wide districting plan; and

(c) Creating a committee of the state legislature for the purposes of redistricting.

We received your submission on December 26, 2001; supplemental information was last received January 31, 2002.

Under the Voting Rights Act, a jurisdiction seeking to implement a proposed change affecting voting, must establish that, in comparison with the status quo, the change does not "lead to a retrogression" in the position of minority voters with respect to the "effective exercise of the electoral franchise." *See Beer v. United States*, 425 U.S. 130, 141 (1976). In addition, the jurisdiction must establish that the change was not adopted with an intent to retrogress. *Reno v. Bossier Parish School Board*, 528 U.S. 320, 340 (2000). Finally, the submitting authority has the burden of demonstrating that the proposed change has neither the prohibited purpose nor effect. *Id.* at 328; *see also Procedures for the Administration of Section 5* (28 C.F.R. 51.52).

The Attorney General does not interpose any objection to the change in voting procedure that creates a committee of the legislature to consider redistricting proposals. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Because the December 13, 2001 Order of the Mississippi Supreme Court (In re Mauldin No. 2081-M-01891), and the December 21 & 31, 2001 Orders of the Chancery Court which adopted a redistricting plan, are directly related, it would be inappropriate for the Attorney General to make a determination concerning the congressional redistricting plan adopted by the Chancery Court. See 28 C.F.R. 51.22(b); 51.35. By its

December 13 Order it is the Mississippi Supreme Court that granted the Chancery Court of Hinds County jurisdiction to adopt and direct the implementation of a congressional redistricting plan for the State of Mississippi.

Our analysis indicates that the information sent to date regarding this change in voting procedure is insufficient to enable us to determine that all or parts of the change do not have the purpose, and will not have the effect, of denying or abridging the right to vote on account of race, color, or membership in a language minority group, as required under Section 5. The following information is necessary so that we may complete our review of this portion of the submission.

1. A detailed description of the specific way(s) in which the change satisfies the requirements of Section 5. Please set forth any evidence the State contends supports the conclusion that this change will not have the purpose or effect of denying or abridging the right to vote on account of race or color.

2. Please provide the following information about the nature and structure of state courts, and the change in procedure granting Chancery Courts Jurisdiction to fashion state-wide redistricting plans:

   (A) Please explain the State's view of the legal basis for the Mississippi Supreme Court's decision to vest a Chancery Court with jurisdiction to create and implement a statewide redistricting plan. The basis for the Mississippi Supreme Court's decision is unclear.

   (B) Please explain the State's view of the relationship between this change in voting

procedure and Miss. Code Annot. 23-15-1039.

(C) Please explain and discuss whether any individual Chancery Court in the State can be granted, or may assert, jurisdiction to enact a state-wide congressional redistricting plan, and whether such court's jurisdiction may vest from a party filing suit in that court, or must first be specifically granted by a higher court in the state court system.

(D) Please provide detailed information about the nature and structure of state Chancery Courts, e.g., the number of Chancery Court judges; how Chancery Court judges are selected and whether those requirements are uniform state-wide; residency requirements applicable to Chancery Court judges; whether such judges are elected at-large or by districts; if by district, the demographic breakdown of the districts from which such judges are selected; the demographic breakdown of the Chancery Court judiciary; the limits imposed on Chancery Court jurisdiction, either by statute, common law, or state constitution; and whether local rules of practice vary among Chancery Courts.

(E) Please describe any safeguards in place to ensure that a particular Chancery Court judge who creates and imposes a state-wide redistricting plan has him/herself been selected in a manner reflecting the political influence of the State's minority populations. For example, may a Chancery Court judge, selected in a county that is 95% white and 5% black or other minority, impose a redistricting plan binding the entire State?

(F) Please describe the State's view as to whether a state Chancery Court would have jurisdiction to hear proceedings concerning, and later fashion and implement, state-wide reapportionment plans other than congressional plans.

(G) Please provide information regarding whether Chancery Courts historically have had jurisdiction to preside over proceedings involving state-wide redistricting plans and then themselves adopt and implement such plans.

(H) Please describe any existing legal procedure that would prevent a potential litigant from "forum shopping," or otherwise attempting to ensure, for strategic purposes, that a particular Chancery Court presides over redistricting proceedings.

(I) Please describe and explain any laws and/or court rules governing or otherwise impacting the selection of venue for state Chancery Courts.

(J) Please explain whether Chancery Court decisions are appealable, by right, by any party to the suit.

With respect to the actual congressional redistricting plan submitted by the State, we have concerns about the Department reviewing it while the plan, which was created by a Chancery Court, is pending final approval by the Mississippi Supreme Court on direct appeal. In that regard, please see the attached letter to the Chief Justice of that Court, sent this date. Please note that the Department is not formally seeking additional information regarding the redistricting plan, but it welcomes any additional comments or information the State wishes to provide on this issue.

* * *

The Attorney General has sixty days to consider a completed submission pursuant to Section 5. This sixty-day review period will begin when we receive the information specified above, but we will make all efforts to expedite our review to the extent possible. *See Procedures for the Administration of Section 5* (28 C.F.R. 51.37). If no response is received within sixty days of this request, the Attorney General may object to the proposed changes consistent with the burden of proof placed upon the submitting authority. *See also* 28 C.F.R. 51.40; 51.52 (a) and (c). Changes that affect voting are legally unenforceable unless Section 5 preclearance has been obtained. *Clark v. Roemer*, 500 U.S. 646 (1991); 28 C.F.R. 51.10. Therefore, please inform us of the action the State of Mississippi plans to take to comply with this request.

If you have any questions concerning this letter or if we can assist you in obtaining the requested information, you should call Chris Herren (202-514-1416). Refer to File No, 2001-4084 in any response to this letter so that your correspondence will be channeled properly.

Sincerely,

/s/ Joseph D. Rich
Joseph D. Rich
Chief, Voting Section

APPENDIX V

U.S. Department of Justice
Civil Rights Division

Washington, D.C. 20530

February 14, 2002

VIA FACSIMILE (601-359-2407)
& FIRST CLASS MAIL
The Honorable Edwin Lloyd Pittman
Chief Justice
Mississippi Supreme Court
Gartin Justice Building
4S0 High Street
Jackson, MS 39201

Dear Chief Justice Pittman:

I write with regard to the congressional redistricting plan recently submitted by the State of Mississippi to the United States Department of Justice (the "'Department") for preclearance under our Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c, 28 C.F.R. Part 51. As you know, that plan, pursuant to an order of your honorable Court, was originally drafted by the Chancery Court of the First Judicial District of Hinds County after trial, and is now pending before your Court on direct appeal. *Mauldin v. Branch*, 2002-TS-00146 (filed January 25, 2002). Moreover, a federal court, in *Smith v. Clark*, No. 3:01-CV-855WS (S.D. Miss. filed Dec. 17, 2001), recently

ordered implementation of its own redistricting plan for the upcoming congressional election, "absent the timely preclearance of the redistricting plan adopted by the State Chancery Court."

The Department's Civil Rights Division is attempting to complete, as quickly as possible, its review of the plan submitted by the state. Legal developments surrounding the plan, however, present the Department with a unique situation: the plan was created in full, not by the State legislature, but by a local Chancery Court, and is now pending on appeal before the state's highest Court. Despite the pendency of that appeal, however, the plan has also been submitted to the Department for preclearance. Finally, a wholly separate plan has been drafted by a federal court, which will be imposed if the Department does not very soon complete its review of the State's submission.

It is the Department's view that, where possible, issues inherent to state-level governance should first be resolved by state authorities. Moreover, we are concerned with the practical aspects of ruling under Section 5 on a plan that realistically could be altered by the Mississippi Supreme Court. *See, e.g., Young v. Fordice*, 520 U.S. 273 (1997). Thus, I write to request respectfully that the Mississippi Supreme Court consider expediting its review of the appeal pending before it to the extent possible. In making this request, I am mindful of the many important matters pending before your Court and the Court's need to manage its docket in the manner it deems most appropriate. I greatly appreciate any assistance you may provide in this regard.

Finally, I am enclosing a copy of a letter sent this date to The Honorable Michael Moore, the Attorney General of the

State of Mississippi, seeking further information regarding the Mississippi Supreme Court's decision to repose in the Chancery Courts authority to create and impose redistricting plans. As you may know, in addition to objecting to or preclearing a submitted plan or other change in voting procedure, under the Voting Rights Act of 1965, 42 U.S.C. 1973c, 28 C.F.R. Part 51, the Department also is authorized to request further information on material aspects of a submission if required to determine if the submission complies with Section 5.

Thank you again for your consideration.

Sincerely,

/s/ Ralph F. Boyd, Jr.
Ralph F. Boyd, Jr.
Assistant Attorney General
Civil Rights Division

APPENDIX W

February 20, 2002

Via Hand Delivery
Honorable Henry T. Wingate
United States District Judge
245 East Capitol Street
Suite 109
Jackson, Mississippi 39201

Via Hand Delivery
Honorable E. Grady Jolly
Fifth Judicial Circuit Judge
202 James O. Eastland Courthouse
245 East Capitol Street
Jackson, MS 39201

Honorable David C. Bramlette, III
United States District Judge
725 Dr. Martin Luther King Blvd.
Biloxi, Mississippi
39530-2267

RE:*John Robert Smith, et al. v. Eric Clark, et al.*
U.S. District Court-Southern District-Jackson Division
Cause No. 3:01CV855 WS

Dear Judges Wingate, Bramlette, and Jolly:

Pursuant to the Court's letter of February 15, 2002, I am attaching for your information copies of the Mississippi Attorney General's response to the United States Justice Department's request for additional information as to the Chancery Court's redistricting plan and proceedings, along with the exhibits that were included. Under cover of this letter copies of these materials are also being distributed to all counsel. This response and exhibits were sent to the Justice

Department via Federal Express on February 19, 2002 and should have been received there this morning. The response itself was faxed to the Justice Department yesterday afternoon.

Pursuant to the Court's request in its February 15, 2002 letter we will immediately apprise the Court of further developments regarding this submission.

Sincerely,

/s/ T. Hunt Cole, Jr.
T. Hunt Cole, Jr.
Special Assistant Attorney General

Enclosures

cc: Arthur F. Jernigan, Jr. Esq.
Michael B. Wallace, Esq.
Robert B. McDuff, Esq.
Herbert Lee, Jr., Esq.
Carlton Reeves, Esq.
John G. Jones, Esq.

February 19, 2002

Mr. Joseph D. Rich, Chief,
Voting Section, Civil Rights
Division
Room 7254 - NWB
Department of Justice
1800 G St., N.W.
Washington, D.C. 20006

VIA FACSIMILE: (202) 616-9514

Re: State of Mississippi's Additional Information Pursuant to Correspondence of February 14, 2002, in Support of Congressional Redistricting Plan Adopted by the Chancery Court for the First Judicial District of Hinds County, Mississippi; Submission 2001-4084

Dear Mr. Rich:

The State of Mississippi hereby submits the additional information requested regarding its submission of the Congressional Redistricting Plan adopted by the Chancery Court for the First Judicial District of Mississippi, in accordance with Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. Section 1973(c). This additional information is being supplied in response to correspondence date February 14, 2002 addressed to our office. Please note that the State of Mississippi has requested expedited consideration of its responses to the questions posed by the Department of Justice. Also, supporting documentation to our responses (the exhibits which are referenced) is being sent via Federal Express overnight as the cumulative nature of the material would preclude sending by facsimile transmission.

Thank you for your attention to this matter. If any additional information is needed, please advise. You may contact me by telephone at (601) 359-3803, by fax at (601) 359-5025, and by email at hwagn@ago.state.ms.us.

Sincerely,

/s/ Heather P. Wagner
Heather P. Wagner
Assistant Attorney General

Enclosures

SUBMISSION UNDER SECTION 5 OF THE VOTING RIGHTS ACT OF 1965 AS AMENDED, 42 U.S.C. SECTION 1973(c)

TO: The Attorney General of the United States of America

RESPONSE TO REQUEST FOR ADDITIONAL INFORMATION REGARDING THE STATE OF MISSISSIPPI'S CONGRESSIONAL REAPPORTIONMENT PLAN AS ADOPTED BY THE CHANCERY COURT OF THE FIRST JUDICIAL DISTRICT OF HINDS COUNTY, MISSISSIPPI

FILE NO. 2001-4084

EXPEDITED REVIEW REQUESTED

In accordance with the Department of Justice's February 14, 2002, request for additional information in connection with the Section 5 review of certain submitted changes for Mississippi's Congressional redistricting plan, the Attorney General for the State of Mississippi hereby submits the requested additional information to the U.S. Department of Justice.

Initially, it is noted that Attorney General Moore submitted the entire Chancery Court litigation record, including the

exhibits that were introduced by the adverse parties at the three day trial and the transcript of the trial proceedings, as well as the Chancery Court opinions and orders and the Mississippi Supreme Court order on the interlocutory request for writ of prohibition. In this litigation context, the record speaks for itself. The arguments for and against Chancery Court jurisdiction over congressional redistricting were presented to the Chancery Court and the Mississippi Supreme Court by the parties and were included in that record, and the Mississippi Attorney General was a party defendant, although not taking an active role in the trial. The case is still in litigation by an appeal to the Mississippi Supreme Court, which will at some juncture issue an opinion and judgment in the appeal, presumably including a final determination on the merits of the issue of Chancery Court jurisdiction. Accordingly, in these circumstances, it is improper to speculate on what the Mississippi Supreme Court was thinking when it issued its order in *In Re Mauldin*. Unlike the situation where typical legislative or executive action is concerned, we cannot in this instance, with the matter still in litigation, go "behind the record" to probe into the Chancery Court's or Supreme Court's motivation or speculate as to the substance or effect of any future ruling of the Mississippi Supreme Court, and indeed it would be untoward for us to do so as officers of the Court in the litigation.

With the foregoing limitations in mind, the State of Mississippi is unable to provide any further information as to some of your questions specifically requesting further information about the litigation itself, which is already reflected in the record we have already submitted. The record is what it is, and the definitive answers to many of your questions necessarily must come from the Chancery Court Order or the Mississippi Supreme Court itself. As indicated below, we will,

however, supply or identify general background information about the Chancery Court system in general.

1. A detailed description of the specific way(s) in which the change satisfies the requirements of Section 5. Please set forth any evidence the State contends supports the conclusion that this change will not have the purpose or effect of denying or abridging the right to vote on account of race or color.

   The change in voting procedures prompted by the Mississippi Supreme Court's order of December 13, 2001, holding that the Hinds County Chancery Court had jurisdiction to draw a congressional redistricting plan does not violate Section 5 of the Voting Rights Act. A decision by the highest state court in Mississippi vesting in chancery courts the jurisdiction to consider and adopt a congressional redistricting plan does not, in and of itself, constitute retrogressive effect. As to Section 5, there is no evidence of which we are aware that would indicate that such opinion or order was motivated by an intent to retrogress against minority voting strength or would have the effect of doing so with regard to congressional redistricting. Chancery Court judges are elected as provided by state law and are sworn to uphold the laws of the State of Mississippi. *See* Miss. Const. Article 6, §§ 153-154 (1890). In this regard, we would further note that, as indicated further below, the chancery court system and election districts have themselves been previously precleared.

   There is nothing contained in the Mississippi Supreme Court order of December 13, 2001, which provides a

basis for a determination of a retrogressive result by conferring jurisdiction upon a chancery court judge to adopt a congressional redistricting plan. Indeed, even if this concern had basis in evidence, law or fact, the preclearance procedures set in place under Federal law ensure that any plan drawn by a state court judge or any other governmental official(s), will be reviewed for compliance with Section 5 of the Voting Rights Act.

Further, there is no evidence to support a finding that allowing a state court to proceed forward and draw a congressional redistricting plan in the face of Miss. Code Ann. Section 23-15-1039, providing for at-large election in the event no plan is in place by the time for congressional elections, in circumstances in which the state is losing a congressional seat, has a retrogressive purpose or effect.

2. Please provide the following information about the nature and structure of state courts, and the change in procedure granting Chancery Courts jurisdiction to fashion state-wide redistricting plans:

   (a) Please explain the State's view of the legal basis for the Mississippi Supreme Court's decision to vest a Chancery Court with jurisdiction to create and implement a statewide redistricting plan. The basis for the Mississippi Supreme Court's decision is unclear.

   Under the Constitution of the State of Mississippi, the Mississippi Supreme Court is the final arbiter of decisions pertaining to matters of state law. *See* Miss. Const. Article 6, Sections 144, 146. It has "such

jurisdiction as properly belongs to a court of appeals . . .". Miss Const. Article 6, § 146; Miss Code Ann. § 9-3-9 (Supp. 2001). *(Exhibit 1)*. In this matter, the Mississippi Supreme Court has exercised its authority and conferred jurisdiction upon a chancery court to adopt a congressional redistricting plan. For the reasons previously stated, the Mississippi Attorney General has neither the power nor authority to go behind what the Mississippi Supreme Court has held and attempt to speculate as to its rationale for that holding.

(b) Please explain the State's view of the relationship between this change in voting procedure and Miss. Code Ann. Section 23-15-1039.

As described in our original submission, the adoption of a single member district plan by the Chancery Court is a departure from the legislatively prescribed at-large temporary remedy of Section 23-15-1039 where a congressional seat is lost. As indicated by the Chancery Court record, the parties argued over whether Section 23-15-1039 should be applied, although at trial both sides pushed single member district plans. The plaintiffs in state court argued that the use of the at-large method of election might result in dilution of black voting strength. The unquestioned preference of courts and legislatures at this time is for the single-member congressional districts rather than the use of at-large congressional election plans.

(c) Please explain and discuss whether any individual Chancery Court in the State can be granted, or may assert, jurisdiction to enact a state-wide congressional redistricting

plan, and whether such court's jurisdiction may vest from a party filing suit in that court, or must first be specifically granted by a higher court in the state court system.

The Order of the Mississippi Supreme Court, on interlocutory petition for writ of prohibition, in *In re Mauldin*, No. 2001-01891, is specific in its finding that the Chancery Court of the First Judicial District of Hinds County had jurisdiction over the drafting and implementation of a state-wide congressional redistricting plan.

(d) Please provide detailed information about the nature and structure of state Chancery Courts, e.g., the number of Chancery Court judges; how Chancery Court judges are selected and whether those requirements are uniform state-wide; residency requirements applicable to Chancery Court judges; whether such judges are elected at-large or by districts; if by district, the demographic breakdown of the districts from which such judges are selected; the demographic breakdown of the Chancery Court judiciary; the limits imposed on Chancery Court jurisdiction, either by statute, common law, or state constitution; and whether local rules of practice vary among Chancery Courts.

There are forty-five (45) Chancery Court judges in the State of Mississippi elected from twenty (20) Chancery Court districts. The method of election of these judges is uniform state-wide as provided in Article 6, § 153 of the Mississippi Constitution and Miss. Code Ann. §§ 9-5-1, *et seq.* (attached hereto as *Exhibit 2*). As to residency, "[a] chancellor shall be a resident of the district in which he serves but shall not be required to be a resident of the subdistrict if the

district is divided into subdistricts." Miss. Code Ann. § 9-5-1 (Supp. 2001). Chancery Court judges are elected by district as set forth above and as reflected by the attached statutes. The preceding chancery court structure has been precleared by the U.S. Attorney General on September 6, 1994, on which date the U.S. Attorney General precleared Chapter 564, Laws of 1994. A copy of the letter evidencing that preclearance is attached hereto and incorporated herein by reference. (*Exhibit 3*). The submission and information supplied in support of that previous submission is maintained in your files and is incorporated herein by reference.

The demographic breakdown of each Chancery Court district as drawn in 1994 and as currently exist based upon the 2000 Census data is attached hereto. (*Exhibit 4*). As to the demographic breakdown of the Chancery Court judiciary, candidates for the judiciary are not required to specify race in qualifying for such position. Therefore, a document setting forth the demographic breakdown of the chancery judiciary is not available. However, a list of the currently sitting chancellors is attached hereto. (*Exhibit 5*). To the best of the State's knowledge, the following chancellors represent minority groups: Patricia D. Wise and Denise Owens (District 5), Ceola James and Vicki R. Barnes (District 9), Gail Shaw-Pierson (District 11), Dorothy Colom (District 14) and Kennie Middleton (District 17). Of the 45 Chancellors, 10 are women.

The jurisdiction of Chancery Courts is set forth in Article 6, §§ 159-161 and Miss. Code Ann. §§ 9-5-81,

et seq., attached hereto. (*Exhibit 6*). Sections 11-5-1 et seq. contain general provisions for practice and procedures in chancery courts. Rule 1 of the Mississippi Rules of Civil Procedure provides that those rules are applicable to procedures in chancery court. Additionally, Rule 81 of the Mississippi Rules of Civil Procedure establish the applicability of the Mississippi Rules of Civil Procedures to certain actions. All Chancery Courts in the State of Mississippi are governed by the Uniform Chancery Court Rules, attached hereto. (*Exhibit 7*). As to local rules, while we understand such may exist, none may be in conflict with the Uniform Rules of Chancery Practice or other rules or statutes.

(e) Please describe any safeguards in place to ensure that a particular Chancery Court judge who creates and imposes a state-wide redistricting plan has him/herself been selected in a manner reflecting the political influence of the State's minority populations. For example, may a Chancery Court judge, selected in a county that is 95% white and 5% black or other minority, impose a redistricting plan binding in the entire state?

As set forth in response 2(d), the current method for election of chancery court judges and the current chancery court structure and districts were approved by the Justice Department under Section 5.

The Mississippi Supreme Court has issued its order, granting authority to the Hinds County Chancery Court to draft and implement a congressional redistricting plan. We know of no circumstances in which court jurisdiction would depend upon racial demographics.

(f) Please describe the State's view as to whether a state Chancery Court would have jurisdiction to hear proceedings concerning, and later fashion and implement, state-wide reapportionment plans other than congressional plans.

The Order of the Supreme Court does not address this question. The jurisdiction of a Chancery Court to hear proceedings and fashion and implement reapportionment plans other than congressional plans is a matter to ultimately be decided by the State's highest court of competent jurisdiction, which is the Mississippi Supreme Court, as set forth in paragraph 2(a), *supra*. With respect to a legislative deadlock in the reapportionment of the state House of Representatives and the State Senate, Section 254 of the State Constitution provides for a commission of five elected officials to adopt a redistricting plan as the final authority. (*Exhibit 8*).

(g) Please provide information regarding whether Chancery Courts historically have had jurisdiction to preside over proceedings involving state-wide redistricting plans and then themselves adopt and implement such plans.

The State is aware of several cases which hold that a chancery court lacks the jurisdiction to entertain suits challenging congressional redistricting plans for Mississippi. (p. 4, Submission 2001-4084). The MS Supreme Court has ruled that a chancery court has jurisdiction to preside over proceedings involving state-wide redistricting plans. All of the relevant authorities addressing this issue were fully briefed by the parties to the litigation in the Chancery Court and are contained in the written materials filed in the

Court record by those parties, which were attached to the original submission as Appendix B.

(h) Please describe any existing legal procedure that would prevent a potential litigant from "forum shopping," or otherwise attempting to ensure, for strategic purposes, that a particular Chancery Court presides over redistricting proceedings.

The method for determining where a suit is to be filed is governed by the venue statutes (*see infra* subsection (i)) applicable to chancery court proceedings. Each chancery court in the State of Mississippi has its own internal rules for assigning cases to particular judges. The local rules vary from jurisdiction to jurisdiction. In the 5th Chancery Court District (Hinds County), when contested matters are filed and entered into the computer, the computer selects, at random, the chancellor to preside over each matter. The State of Mississippi cannot, with certainty, describe the procedures that have been adopted in other districts, nor can the State represent or certify that at all times local procedures are followed.

(i) Please describe and explain any laws and/or court rules governing or otherwise impacting the selection of venue for state Chancery Courts.

In Mississippi, venue is controlled by statute. Mississippi Code § 11-5-1 sets forth the venue for matters in the chancery courts. Venue is proper and cases "may be brought in the chancery court of any county where the defendant, or any necessary party defendant, may reside or be found." Miss. Code Ann.

§ 11-5-1 (1991). (*Exhibit 9*).

(j) Please explain whether Chancery Court decisions are appealable, by right, by any party to the suit.

> Appeals in Mississippi are governed and controlled by the Mississippi Rules of Appellate Procedure. Rule 3 sets forth the procedure for taking appeals from the Chancery Court to the Mississippi Supreme Court. Miss. R. App. Proc. R.3. Pursuant to Mississippi Code § 11-51-3, "an appeal may be taken to the Supreme Court from any final judgment of a . . . chancery court in a civil case . . .by any of the parties or legal representatives of such parties. . . ." Miss. Code Ann. § 11-51-3 (Supp. 2001). (*Exhibit 10*).

If the Attorney General of the United States needs any further information concerning this submission or this additional information, the State of Mississippi will attempt to supply it.

Again, pursuant to 28 C.F.R. Section 51.34, the State of Mississippi requests that the U.S. Justice Department afford this supplemental information expedited consideration and review.

This the 19th day of February, 2002.

Respectfully Submitted,

STATE OF MISSISSIPPI

By: /s/ Heather Wagner
Mike Moore
Attorney General
State of Mississippi

Attorney and Chief Legal Officer for
the State of Mississippi

Heather P. Wagner
Assistant Attorney General
Post Office Box 220
Jackson, Mississippi 39205-0220

[Exhibits Omitted in Printing]

APPENDIX X

IN THE CHANCERY COURT OF THE FIRST
JUDICIAL DISTRICT OF HINDS COUNTY, MISSISSIPPI

BEATRICE BRANCH; RIMS BARBER;
L.C. DORSEY; DAVID RULE; MELVIN HORTON;
JAMES WOODARD; JOSEPH P. HUDSON; and
ROBERT NORVEL PLAINTIFFS

V. NO. G-2001-1777 W/4

ERIC CLARK, Secretary of State of
Mississippi; Mike Moore, Attorney General
of Mississippi; Ronnie Musgrove, Governor
of Mississippi DEFENDANTS

CAROLYN MAULDIN, STACY SPEARMAN,
DAVID MITCHELL, and JAMES CLAY
HAYS, JR, INTERVENORS

(Filed Dec. 26, 2001)

CERTIFICATE OF COMPLIANCE

COME NOW the State Defendants in the above-styled matter and file with this Court a Certificate of Compliance pursuant to the direction of the Opinion and Order of the Court dated December 21, 2001, and in so doing would show unto this Honorable Court the following, to-wit:

I. That due to significant disruptions in the receipt of mail by the U.S. Department of Justice, Civil Rights Division, Voting Section, that entity has

prescribed special temporary procedures to be utilized in making submissions for administrative review under Section 5 of the Voting Rights Act of 1965. A copy of those special temporary procedures is attached hereto as Exhibit 1.

II. That, pursuant to those special temporary procedures, the State of Mississippi has communicated with the U.S. Department of Justice, Civil Rights Division, Voting Section, regarding its submission to that entity of the plan adopted by the Court and supporting documentation.

III. That the State of Mississippi is proceeding with its submission based upon directions as received from the Voting Section. Those directions instructed our office to transmit to the Voting Section, by facsimile transmission, certain initial documentation, which included the Opinion and Order of the Court, dated December 21, 2001, and the attachments thereto; the Order of the Mississippi Supreme Court dated December 13, 2001; the current congressional districts as established by Section 23-15-1037; and the existing statute regarding at-large districts.

IV. That, as a result of this initial facsimile transmission, the Voting Section has advised that the statutory sixty (60) day period for review will begin today, December 26, 2001. The Court should note that while the Attorney General of Mississippi requested expedited consideration of this submission, the Justice Department is not

bound to honor that request, and is only mandated to complete its review within sixty (60) days. Please see the attached correspondence which is included as Exhibit 2 to this certificate, acknowledging the receipt of the State's submission and the beginning of administrative review pursuant to Section 5.

V. Again, following guidance provided by the Justice Department, the State intends to finalize its submission on Thursday, December 27, 2001, by hand-delivering remaining materials to the U.S. Justice Department, Civil Rights Division, Voting Section, at its offices in Washington, D.C. The State will include election data from prior years elections, the entire transcript of the proceedings in Chancery Court, all exhibits considered by the Court and the Court file. At the time the information was sent by facsimile, that information from the Court had not yet been received from officers of the Court. Separation of that information into separate transmissions may result in confusion or loss of data. The Court will be advised upon the completion of delivery of this additional information to the Voting Section.

RESPECTFULLY SUBMITTED, this the 26th day of December, 2001.

ERIC CLARK, Secretary of State of Mississippi;
MIKE MOORE, Attorney General of Mississippi;
RONNIE MUSGROVE, Governor of Mississippi,
Defendants

By: MIKE MOORE, ATTORNEY GENERAL

By: /s/ Heather P. Wagner
Heather P. Wagner, MSB #9425
Assistant Attorney General

Office of the Attorney General
Post Office Box 220
Jackson, Mississippi 39205-0220
(601) 359-3680

[certificate of service omitted in printing]

[Exhibit 1 omitted in printing]

[Exhibit 2 to certificate of compliance]

U.S. Department of Justice
Civil Rights Division

Voting Section
P.O. Box 66128
Washington, D.C. 20035-6138

December 26, 2001

TRANSMITTAL SHEET

TO:

NAME: Heather P. Wagner, Assistant Attorney General

OFFICE: Office of the Attorney General for the State of Mississippi

TELEFACSIMILE: 601/359-5025

FROM:

Robert S. Berman
Deputy Chief, Voting Section
Civil Rights Division
Department of Justice
Room 7243 NWB
950 Pennsylvania AV, N.W.
Washington, D.C. 20530
202/514-8690 (office)
202/307-2569 (telefacsimile)

RE: Submission of congressional redistricting plan for administrative review under Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c.

This transmittal consists of 2 pages including the cover page.

The original of this document will not be sent.

STATEMENT ACKNOWLEDGING RECEIPT OF SUBMISSION OF THE REDISTRICTING PLAN FOR THE STATE OF MISSISSIPPI FOR ADMINISTRATIVE REVIEW PURSUANT TO SECTION 5 OF THE VOTING RIGHTS ACT OF 1965

I, Robert S. Berman, Deputy Chief, Voting Section, Civil Rights Division, U.S. Justice Department, acknowledge receipt, from and on behalf of the sovereign State of Mississippi, the plan for congressional redistricting of the State of Mississippi as ordered by Chancery Court of the First Judicial District of Hinds County, Mississippi, for the purpose of administrative review pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. This submission has been made according to special temporary procedures adopted by the Voting Section for receiving Section 5 submissions. I also acknowledge that the receipt of this redistricting plan on this date will commence the sixty (60) day time period for administrative review under Section 5 of the Voting Rights Act.

This the 26th day of December, 2001.

/s/ Robert S. Berman
Robert S. Berman
Deputy Chief, Voting Section
Civil Rights Division
U.S. Department of Justice

APPENDIX Y

STATE OF MISSISSIPPI

OFFICE OF THE ATTORNEY GENERAL

MIKE MOORE
ATTORNEY GENERAL

OPINIONS
DIVISION

December 26, 2001

Mr. Joseph D. Rich, Acting Chief
Voting Section, Civil Rights Division
Department of Justice
1800 G Street N.W.
Room 7254
Washington, D.C. 20006

Re: Submission by the State of Mississippi of Congressional Redistricting Plan Pursuant to Opinion and Order of the Chancery Court of the First Judicial District of Hinds County, Mississippi

EXPEDITED CONSIDERATION AND PRECLEARANCE BY JANUARY 31, 2002, REQUESTED

Dear Mr. Rich:

On behalf of the State of Mississippi, I hereby submit for preclearance under Section 5 of the Voting Rights Act of 1965,

as amended and extended, 42 U.S.C. Section 1973c, the enclosed copy of the above-referenced submission.

2002 is a regular congressional election year in the State of Mississippi. The deadline for candidate qualification is March 1, 2002. So that the public and candidates will have adequate time to become familiar with the congressional districts upon preclearance, *the State of Mississippi respectfully requests that the Attorney General of the United States grant this matter expedited consideration and that the Attorney General preclear this submission no later than January 31, 2002.*

In light of, and in compliance with, the temporary procedures for submissions adopted by the Justice Department, the State of Mississippi is sending its initial preclearance documentation via facsimile to the number specified for that purpose: (202)305-4719. Further documentation will be forthcoming in both electronic format and hard copies. It is our understanding that receipt of this facsimile transmission will constitute a "filing" with the Department. The State of Mississippi respectfully requests that receipt of our submission be acknowledged by return fax indicating the file number assigned to this submission. We are presently operating under an Order of the Chancery Court of the First Judicial District of Hinds County, Mississippi, which requires our office to file a certificate of compliance with that Court no later than 5:00 p.m. on December 26, 2001, advising the Court that the State's submission has been filed.

A complete copy of this submission is on file for inspection by the public during normal business hours in the offices of the Attorney General of the State of Mississippi, Carroll Gartin Justice Building, 450 High Street, 5th Floor, Jackson, Mississippi 39201, (601) 359-3680.

Again, additional documentation will be forthcoming pending further contact from your office on the method, manner and mode to be used for transmitting it to your offices. Thank you for your consideration of this submission. Please notify us by fax (601-359-5025) and phone (601-359-3803) of the action taken on this submission. If you have any questions concerning this submission, please contact Heather Wagner, Assistant Attorney General (601-359-3803).

Sincerely,

MIKE MOORE, ATTORNEY GENERAL
STATE OF MISSISSIPPI

By: /s/ Heather P. Wagner
Heather P. Wagner
Assistant Attorney General

HPW/dm

enclosures:

1. Submission by the State of Mississippi of Congressional Redistricting Plan pursuant to the Opinion and Order of the Chancery Court of the First Judicial District of Hinds County, Mississippi

2. Opinion and Order of the Chancery Court of the First Judicial District of Hinds County, Mississippi

3. Order of the Mississippi Supreme Court

4. Section 23-15-1039 of the Mississippi Code of 1972, Annotated, as amended

5. Section 23-15-1037 of the Mississippi Code of 1972, Annotated, as amended, and maps and data regarding current Mississippi congressional districts

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SUBMISSION UNDER SECTION 5 OF THE
VOTING RIGHTS ACT OF 1965
AS AMENDED, 42 U.S.C. SECTION 1973(c)

TO: The Attorney General of the
United States of America

SUBMISSION BY THE STATE OF MISSISSIPPI OF
CONGRESSIONAL REDISTRICTING PLAN
PURSUANT TO OPINION AND ORDER OF THE
CHANCERY COURT
OF THE FIRST JUDICIAL DISTRICT OF HINDS
COUNTY, MISSISSIPPI

Expedited Consideration and Preclearance Requested In
View of
March 1, 2002, Deadline for Candidate Qualification

Pursuant to Section 5 of the Voting Rights Act of 1965, as amended and extended, 42 U.S.C. Section 1973(c) [hereinafter referred to as Section 5] and the U. S. Department of Justice's Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, as amended, 28 C.F.R. Sections 51.1, *et seq.* (1987), the State of Mississippi, by and through the Attorney General of the State of Mississippi, respectfully

submits to the Attorney General of the United States for Section 5 preclearance the complete and certified copy of the Opinion and Order of the Chancery Court of the First Judicial District of Hinds County, Mississippi, dated December 21, 2001, redrawing the Congressional Districts for the State of Mississippi [hereinafter sometimes referred to as "the Order", and/or instant submission]. In making this submission, the State of Mississippi hereby expressly reserves and does not waive any and all objections it may have concerning whether the instant submission, or any parts thereof, is subject to the preclearance requirements of Section 5.

Pursuant to 28 C.F.R. Section 51.34, the State of Mississippi requests expedited consideration of this submission. In support of its request for expedited consideration, the State of Mississippi would show the following: that the Mississippi Legislature failed to adopt a redistricting plan for Mississippi's congressional seats, that the Chancery Court for the First Judicial District of the State of Mississippi adopted a redistricting plan for the newly configured congressional seats for the State of Mississippi, and that this plan was issued in the form of an Opinion and Order dated December 21, 2001. For upcoming 2002 elections, the statutory deadline for qualification of candidates is March 1, 2002. Serious candidate and voter confusion may occur should this submission not receive consideration and review, and ultimate approval, in advance of the usual sixty day period the Department is allotted for administrative review. The State of Mississippi requests that it receive proper review of this submission no later than January 31, 2002, to allow candidates and voters to fully understand the newly enacted district lines prior to the qualifying deadline of March 1, 2002.

For this submission, the State of Mississippi respectfully

states as follows:

28 C.F.R. Section 51.27(a).

A certified copy of the Opinion and Order of the Chancery Court of the First Judicial District of Hinds County, Mississippi, Honorable Patricia Wise, Chancellor, issued on December 21, 2001, in the matter of *Beatrice Branch; Rims Barber; L.C. Dorsey; David Rule; Melvin Horton; James Woodard; Joseph P. Hudson; and Robert Norvel vs. Eric Clark, Secretary of State of Mississippi; Mike Moore, Attorney General of Mississippi; Ronnie Musgrove, Governor of Mississippi,* Hinds County Chancery Court Civil Action No. G-2001-1777 W/4, is attached hereto as Appendix A. The entire court file in the above-referenced civil action is attached hereto and incorporated herein as Appendix B. The complete record in the above-referenced civil action, consisting of transcripts of the proceedings and exhibits presented to and considered by the Chancellor, are attached hereto and incorporated herein as Appendix C. At various points within this submission, reference will be made to certain exhibits contained in Appendix C by the original exhibit number in the Chancery proceedings.

28 C.F.R. Section 51.27(b).

The Opinion and Order of the Chancery Court re-draws Congressional Districts for the State of Mississippi. Section 23-15-1037 of the Mississippi Code of 1972, as amended, which establishes the current congressional district lines, has not been amended, and is attached hereto as Appendix D. Further, attached hereto as Exhibit 25 to the Chancery proceedings, contained in Appendix C hereto, is a map of the current Congressional Districts.

28 C.FR. Section 51.27(c).

Submitted for approval of the Justice Department under Section 5 are the following:

1. The Opinion and Order of the Chancery Court of the First Judicial District of Hinds County, Mississippi, entered December 21, 2001, in *Branch, et al. v. Clark, et al., supra*, substantively adopting a new congressional redistricting plan for Mississippi based on the 2000 census results and reflecting the federal reapportionment of congressional seats for Mississippi from 5 members to 4 members. In this regard it is noted that the Opinion and Order of the Chancery Court are subject to the possibility of an appeal by the parties to the Mississippi Supreme Court, an that the Attorney General of Mississippi will advise the Justice Department of the existence and status of any such appeal.

The Attorney General further submits for approval under Section 5 standards the following additional matters which may constitute a covered change with respect to the method, manner, procedure, or transfer of authority to adopt the congressional redistricting plan, different from that in effect on November 1, 1964, or that constitutes a departure by the Chancery Court Order and Judgment from existing Mississippi statutory law precleared as a part of the State Election Code in 1986, as follows:

2. The orders of the Chancery Court of the First Judicial District of Hinds County in *Branch v. Clark, supra*, and the related Order of the Supreme Court in Mississippi in *In Re Carolyn Mauldin*, No. 2001-M-1892, entered on December 13, 2001, all holding or asserting that a chancery court in Mississippi has the authority and jurisdiction to hear and

determine a congressional redistricting suit and to issue a new congressional redistricting plan as a remedy for the State of Mississippi where the Legislature has failed to adopt such a plan in a timely manner. A copy of the Supreme Court Order is attached hereto and incorporated herein as Appendix E. Historically, the State Legislature enacts congressional redistricting plans for the State of Mississippi. In 1932, the Mississippi Supreme Court held that the State chancery courts and the State circuit courts did not have jurisdiction to entertain suits challenging congressional redistricting plans for Mississippi. *Brumfield v. Brock*, 169 Miss. 784, 142 So. 2d 745 (1932). Wood v. Gillespie, 169 Miss. 790, 142 So. 747 (1932). Insofar as can be determined, those cases had not been overruled or questioned as of the benchmark date of November 1, 1964, nor had a State chancery or circuit court otherwise issued a congressional redistricting plan as of that date. In the instant matter, as set forth in the Opinion of the Chancery Court, the Legislature did not enact a congressional redistricting plan based on the federal reapportionment as a result of the 2000 census, and the State chancery court assumed jurisdiction of a one-man, one-vote lawsuit demanding that the Chancery Court enact a plan. To the extent that the Chancery Court's adoption of a congressional redistricting plan for Mississippi in court proceedings, instead of by State legislative enactment, constitutes a covered change with respect to the method, manner, procedure, or transferral of authority to adopt a congressional redistricting plan different from that in force on November 1, 1964, such change does not have the purpose or effect of retrogressively abridging or denying the right to vote based on race.

3. The Opinion and Order of the Chancery Court in *Branch v. Clark, supra*, to the extent that it constitutes a departure from Miss. Code Ann. Section 23-15-1039, precleared by the Justice

Department in 1986 as a part of the Mississippi Election Code, and which sets forth an at-large method of election of members of Congress for Mississippi as a temporary remedy where the State is decreasing its numbers of seats in Congress due to federal reapportionment and no new districting plan has been adopted. A copy of Section 23-15-1039 is attached hereto and incorporated herein by reference as Appendix F. The Chancery Court Order and Judgment does not follow or adopt the at-large provisions of Section 23-15-1039, and instead adopts a congressional redistricting plan for Mississippi based on single member districts and one-man one-vote principles. In this regard, it is noted that an at-large method of election may have the potential for being retrogressive with regard to black electoral voting strength, and that single member districts are now the favored standard for congressional reapportionment. For Section 5 purposes, the Chancery Court's adoption of single member districts for congressional redistricting, rather than an at large method of election, did not have the purpose or effect of retrogressively abridging or denying the right to vote because of race.

28 C.F.R. Section 51.27(d).

As directed by the Order of the Chancery Court, the person making this submission is Mike Moore, the Attorney General of and the Chief Legal Officer for the State of Mississippi, whose address is Post Office Box 220, Jackson, Mississippi, 39205, and whose telephone number is (60l) 359-3680.

28 C.F.R. Section 51.27 (e).

The name of the submitting authority is the State of Mississippi and the jurisdiction responsible for the change is the Chancery Court of the First Judicial District of Hinds

County, Mississippi.

28 C.F.R. Section 51.27 (f).

Not applicable.

28 C.F.R. Section 51.27 (g).

The Chancery Court of the First Judicial District of Hinds County, Mississippi, is responsible for making these changes by judicial act.

28 C.F.R. Section 51.27 (h).

The Chancery Court of the First Judicial District of Hinds County, Mississippi, assumed jurisdiction of the matter. The Mississippi Supreme Court on December 13, 2001, issued an Order recognizing the jurisdiction of the Chancery Court over the issues. Appendix E.

28 C.F.R. Section 51.27 (i).

The Order was issued December 21, 2001.

28 C.F.R. Section 51.27 (j).

The Order will be effective from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965.

28 C.F.R. Section 51.27 (k).

The instant submission has not yet been enforced or administered.

28 C.F.R. Section 51.27 (l).

The instant submission affects the entire State of Mississippi.

28 C.F.R. Section 51.27 (m).

See Opinion and Order of the Court (Appendix A).

28 C.F.R. Section 51.27 (n).

The instant submission does not and will not adversely affect racial or language minority groups. The instant submission does not affect language minority groups as such. The instant submission does not have the purpose, and it does not have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. The changes are not in any manner retrogressive of the voting strength of minorities. With regard to the substantive adopting of the new congressional redistricting plan for the State, the submitted change constitutes a significant enhancement of black voting strength in the State of Mississippi. Due to the reduction in the number of representatives, the retention of the majority-minority district (District 2) results in a relative increase in power - election of a minority candidate representing one-fourth (1/4) of the Mississippi delegation, rather than the one-fifth (1/5) under the current plan. Further, any reduction in the percentage of black voting age population in District 2 is minimal, and would not substantially impair the ability of minorities to elect the candidate of their choice. As can be seen from Exhibit 26 to the Court proceedings contained in Appendix C, the percentage of black voting age population in existing District 2 is 61.3% and under the Court's plan, based upon 2000 Census data, it

would be 59.03%, an insubstantial reduction, and not one which would adversely impact black voting power in that District.

28 C.F.R. Section 51.27 (o).

The State of Mississippi is aware of pending litigation regarding this submission.

(1) As mentioned previously, the Mississippi Attorney General is aware of the substantial likelihood that the Opinion and Order of the Chancery Court will be appealed to the Mississippi Supreme Court. As of the preparation of this submission, no such appeal has been taken. However, the Mississippi Attorney General will appraise the Justice Department if and when such appeal is taken.

(2) There is also currently pending in the U.S. District Court for the Southern District of Mississippi an action which could substantially impact the review of this submission by the Justice Department. The case of *John Robert Smith, Shirley Hall, and Gene Walker v. Eric Clark, Secretary of State of Mississippi; Mike Moore, Attorney General for the State of Mississippi; Ronnie Musgrove, Governor of Mississippi; Mississippi Republican Executive Committee; and Mississippi Democratic Executive Committee,* Case No. 3:01cv855WS, is currently pending. Attached hereto and incorporated herein as Appendix G are the Complaint, the Plaintiffs' Motion for Leave to Amend Complaint and for Preliminary Injunction, the State Defendants' Response to Plaintiffs' Motion for Leave to Amend Complaint and for Preliminary Injunction, and the Order of the three-judge panel holding that unless it is clear to that panel by January 7, 2002, that the State authorities can have a redistricting plan in place in time for the qualifying

deadline of March l, 2002, the panel will at that time expeditiously rule on the Motion for a Preliminary Injunction.

28 C.F.R. Section 51.27 (p).

The current Congressional districts have been precleared under Section 5. The current apportionment and districts of the Mississippi Congressional districts are established by Section 23-15-1037 of the Mississippi Code of 1972 (as enacted by Laws, 1991 Extra Session, Chapter 2, Section 1). It was precleared under Section 5 by the U.S. Attorney General by a letter dated February 21, 1992, a true and correct copy of which is attached to this submission as Appendix H and incorporated herein by reference.

In the past, Congressional Districts have been drawn by the Standing Joint Committee on Congressional Redistricting pursuant to Sections 5-3-121, 5-3-123, 5-3-125 and 5-3-127. Plans are submitted to the Governor and the full Legislature pursuant to Section 5-3-129. These procedures were enacted by Laws 1981, Ch. 302. It does not appear that Chapter 302, Laws of 1981, was ever submitted to the Department for administrative review pursuant to Section 5 of the Voting Rights Act of 1965. To the extent necessary, this chapter law is hereby submitted at this time for administrative review pursuant to Section 5. A copy of Chapter 302, Laws of 1981 is attached hereto and incorporated herein as Appendix 1. The assumption of jurisdiction by the Chancery Court has not previously been submitted for preclearance. To the extent necessary, this procedure is hereby submitted at this time for administrative review pursuant to Section 5 of the Voting Rights Act of 1965. The State of Mississippi hereby expressly reserves and does not waive any and all objections it may have concerning whether this chapter law is subject to the

preclearance requirements of Section 5.

Section 23-15-1039, which provides for at-large elections was enacted by Laws 1986, Ch. 495, Section 308, which was precleared under Section 5 by the U.S. Attorney General by a letter dated December 31, 1986, a true and correct copy of which is attached to this submission as Appendix J. The deviation from the statutory procedures set forth by Section 23-15-1039 for conducting at-large elections has not previously been submitted for preclearance. To the extent necessary, this deviation is hereby submitted at this time for administrative review pursuant to Section 5 of the Voting Rights Act of 1965. The State of Mississippi hereby expressly reserves and does not waive any and all objections it may have concerning whether this chapter law is subject to the preclearance requirements of Section 5.

28 C.F.R. Section 51.27 (q).

Because this submission involves a redistricting of congressional districts, the available and relevant information suggested by Section 51.28 is submitted below.

28 C.F.R. Section 51.27 (r).

As the instant submission involves a redistricting, the State of Mississippi submits the available and relevant information listed in Section 51.28.

28 C.F.R. Section 51.28

(a) Demographic Information.

(l) Please refer to Exhibit 26 of the court proceedings

containing statistical tables and Exhibit 25, a map, attached as part of Appendix C, which report the population and voting age population by race for the current Mississippi Congressional Districts as enacted in by Laws, 1991 Extra Session, Chapter 2, Section 1, which was precleared on February 21, 1992. Please also refer to the Court's Opinion and Order and attachments thereto, which contain statistical tables with a map which report the population and voting age population by race based upon the 2000 Census for the Mississippi Congressional Districts as established by the Opinion and Order. No data was presented to the Court regarding language groups.

(2) Please refer to the attachment to the Court's Opinion and Order entitled "Summary Report - Branch Plaintiffs Plan 2A - Zero Deviation."

(3) Any estimates of population by race and language group, made in connection with the change may be found in the court record and exhibits, as well as the Opinion and Order of the Chancery Court.

(4) Information provided to the Department for review pursuant to this Section is being provided in the format presented to the Court by the parties in the Chancery Court action, and to the Mississippi Attorney General by the Court and the parties. The Attorney General cannot state that it comports to the requirements specified by the Department for such data.

(5) Please see above response.

(b) Maps.

(1) See Order and Opinion and attachments thereto

(Appendix A) and Appendix C:

Exhibits 25 and 26 (existing boundaries and population calculations).

(2) See Opinion and Order and attachments.

(3) See Opinion and Order and attachments.

(4) See Opinion and Order of the Court.

(5) Not applicable as there are no new polling places established by this submission.

(6) Not applicable as there are no new voter registration sites established by this submission.

(c) Annexations.

Not applicable.

(d) Election Returns.

Exhibit 58 to the Chancery Court proceedings, contained in Appendix C, was a certified copy of election returns for the 2000 and 1998 Congressional Elections in the State of Mississippi, provided by the Mississippi Secretary of State. Please refer to Appendix K, attached hereto and incorporated herein by reference, which contains election returns for the regular Congressional Elections for the years 2000, 1998, 1996, 1994, 1992 and for the special election for District 2 in 1993. Specific data by precinct level is available to a limited extent, and can be provided to the Justice Department if necessary.

(e) Language Usage.

The submitted chapter law does not affect the use of language in the electoral process.

(f) publicity and participation.

This submission has been the subject of controversy, however, public notice and public hearings were not conducted by the Chancery Court. The Court proceedings were open at all times to members of the public. Although public hearings were conducted by the Standing Join Committee on Congressional Redistricting, evidence of those hearings was not presented to nor considered by the Court.

(g) Availability of the Submission.

(1) The instant submission will be noticed on the Attorney General's website. Additionally, a copy will be available for public review at this office of the MS Attorney General.

(h) Minority Group Contacts.

The following black adult citizens of Mississippi can be expected to be familiar with the instant submission or have been active in the political process:

Representative Bennie G. Thompson
United States House of Representatives
Second District of Mississippi
Congressional Office Address:
107 W. Madison Street
Bolton, MS 39056
(601) 866-9003

Senator Henry J. Kirksey
Mississippi Senate (fmr.)
620 Faculty Drive
Tougaloo, Mississippi
(60l) 957-0688

Judge Patricia Wise, Chancellor
Post Office Box 686
Jackson, Mississippi 39205-0686
(601) 968-6549; (601) 982-7893 - home

If the Attorney General of the United States needs any further information concerning this submission, the State of Mississippi will attempt to supply it.

This the 26th day of December, 2001.

Respectfully submitted,

STATE OF MISSISSIPPI

BY: /s/ Mike Moore
MIKE MOORE
ATTORNEY GENERAL
STATE OF MISSISSIPPI
Attorney and Chief Legal Officer
for the State of Mississippi

Heather P. Wagner
Assistant Attorney General
Post Office Box 220
Jackson, Mississippi 39205
(601) 359-3803

APPENDIX Z

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

JOHN ROBERT SMITH, SHIRLEY HALL,
and GENE WALKER,

Plaintiffs,

vs. No. 3:01cv855

ERIC CLARK, Secretary of State of
Mississippi; MIKE MOORE, Attorney General
of Mississippi; RONNIE MUSGROVE, Governor
of Mississippi; MISSISSIPPI REPUBLICAN
EXECUTIVE COMMITTEE; and MISSISSIPPI
DEMOCRATIC EXECUTIVE COMMITTEE,

Defendants,

and

BEATRICE BRANCH; RIMS BARBER;
L.C. DORSEY; DAVID RULE; JAMES
WOODARD; JOSEPH P. HUDSON; and
ROBERT NORVEL,

Intervenors.

(Filed Feb. 26, 2002)

NOTICE OF APPEAL

The intervenors, BEATRICE BRANCH; RIMS BARBER; L.C. DORSEY; DAVID RULE; JAMES WOODARD; JOSEPH P. HUDSON; and ROBERT NORVEL, hereby notice

their appeal to the United States Supreme Court from the judgment and injunction issued by the three-judge court for the United States District Court for the Southern District of Mississippi on February 26, 2002. This appeal is taken pursuant to 28 U.S.C. § 1253.

Respectfully submitted,

/s/ Robert B. McDuff
ROBERT B. McDUFF
Miss. Bar No. 2532
767 North Congress Street
Jackson, Mississippi 39202
(601) 969-0802

CARLTON W. REEVES
Miss. Bar No. 8515
PIGOTT, REEVES, JOHNSON & MINOR, P.A.
P.O. Box 22725
Jackson, MS 39225-2725
(601) 354-2121

Counsel for Intervenors

Dated: February 26, 2002

[certificate omitted in printing]

APPENDIX AA

IN THE CHANCERY COURT OF HINDS COUNTY, MISSISSIPPI

BEATRICE BRANCH; RIMS BARBER; L.C. DORSEY; DAVID RULE; MELVIN HORTON; JAMES WOODARD; JOSEPH P. HUDSON; and ROBERT NORVEL — PLAINTIFFS

V. — NO. G-2001-1777 W/4

ERIC CLARK, Secretary of State of Mississippi; Mike Moore, Attorney General of Mississippi; Ronnie Musgrove, Governor of Mississippi — DEFENDANTS

(Filed Jan. 25, 2002)

NOTICE OF APPEAL

By this notice, Carolyn Mauldin, Stacy Spearman, David Mitchell, and James Clay Hays, Jr., and the Mississippi Republican Executive Committee appeal to the Supreme Court of Mississippi from the judgment entered in this cause on December 31, 2001, and from all interlocutory orders precedent thereto, as well as from the denial of their motion to vacate or amend judgment and for other relief, by order December 31, 2001.

This the 25th day of January, 2002.

Respectfully submitted,

CAROLYN MAULDIN, STACY SPEARMAN, DAVID MITCHELL, AND JAMES CLAY HAYS, JR.
By their attorneys

/s/ Grant M. Fox
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Fox & Fox, P.A.
P. O. Box 797
Tupelo, MS 38802-0797
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/s/ F. Keith Ball
F. Keith Ball
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Louisville, MS 39339
(662) 779-0909

MISSISSIPPI REPUBLICAN EXECUTIVE COMMITTEE
By its attorneys
PHELPS DUNBAR LLP

BY: /s/ Michael B. Wallace
Michael B. Wallace
Christopher R. Shaw
Phelps Dunbar LLP
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[certificate omitted in printing]